Supreme Court, U.S.
FILED
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CLERK

No. 00-191

# In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, PETITIONER

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

## JOINT APPENDIX

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**PETITION FOR WRIT OF CERTIORARI FILED: AUGUST 3, 2000**
**CERTIORARI GRANTED: OCTOBER 10, 2000**

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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Docket No. 99-1211

FEDERAL ELECTION COMMISSION, PLAINTIFF-COUNTER-DEFENDANT-APPELLANT

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE, DEFENDANT-COUNTER-PLAINTIFF-APPELLEE

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Filed: Apr. 27, 1999

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**DOCKET ENTRIES**

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 4/27/99 | – | [1226881] Civil case docketed. |
| | | * * * * * |
| 6/23/99 | – | [1243323] Appellant's brief by Federal Election. Original and 7 copies. c/s:y. Served on 6/14/99. Oral argument? y, Appendix filed. Original and 1 |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | appendix copy. Appendix Pages: 667 (Two Volumes-One SEALED envelope). |
| | | * * * * * |
| 7/29/99 | – | [1252545] Appellee's brief filed by Colorado Republican. Original and 7 copies. c/s: y. Served on 7/28/99 Oral Argument? y (hrs) |
| 8/23/99 | – | [1259204] Appellant's reply brief filed by Federal Election. Original and 7 copies. c/s: y (afw) |
| 1/18/00 | – | [1294652] Case argued and submitted to Judges Seymour, Tacha, Kelly. (ss) |
| | | * * * * * |
| 1/21/00 | – | [1295838] Appellee's supplemental authority filed by Colorado Republican and submitted to court. Original and 3 copies. c/s: y. (kf) |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 2/7/00 | – | [1299735] Appellant's supplemental authority filed by Federal Election and submitted to court. Original and 7 copies. c/s: y. (nak) |
| 2/22/00 | – | [1303447] Appellee's supplemental authority filed by Colorado Republican and submitted to court. Original and 3 copies. c/s: y. (kf) |
| 5/5/00 | – | [1322392] Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Seymour, dissenting; Tacha, authoring judge; Kelly. [99-1211] (nak) |
| 6/23/00 | – | [1335038] Appellant's motion filed by Appellant Federal Election to stay execution of the mandate pending filing of writ of certiorari. [99-1211] Original and 3 copies. c/s: y (afw) |
| | | * * * * * |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 7/11/00 | – | [1338825] Order filed by Judges Seymour, Tacha and Kelly denying Appellant's motion to stay execution of the mandate pending filing of cert. [1335038-1] Parties served by mail. (afw) |
| 7/11/00 | – | [1338851] Mandate issued to district court. Mandate receipt due 8/1/00. (afw) |

* * * * *

| | | |
|---|---|---|
| 8/11/00 | – | [1347008] Petition for writ of certiorari filed on 8/8/00 by Appellant Federal Election. Supreme Court Number 00-191. (kf) |
| 10/13/00 | – | [1363027] Supreme Court order dated 10/10/00 granting certiorari filed. (gah) |



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Docket No. 89-N-

FEDERAL ELECTION COMMISSION, PLAINTIFF

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE AND DOUGLAS L. JONES, DEFENDANTS

Filed: XXXXXX

**DOCKET ENTRIES**

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 7/6/89 | – | COMPLAINT . . pd |
| 8/25/89 | – | ANSWER & COUNTERCLAIM . . by Defts . . . cos |
| 5/15/90 | – | Motion by defendant Colorado Republican, defendant Douglas Jones for summary judgment before Judge Edward W. Nottingham (yk) [Entry date 08/31/90] |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | * * * * * |
| 7/6/90 | 9 | Motion by plaintiff Federal Election Com for summary judgment before Judge Edward W. Nottingham (yk) [Entry date 07/09/90] |
| | | * * * * * |
| 8/30/93 | 19 | ORDER and Memorandum of decision: by Judge Edward W. Nottingham denying motion for summary judgment before Judge Edward W. Nottingham [9-1] granting; motion for summary judgment before Judge Edward W. Nottingham [0-1] dismissing case; defs' counterclaim dismissed as moot (cc: all counsel); entry date: 8/30/93 (yk) |
| 8/31/93 | 20 | JUDGMENT: by Clerk James R. Manspeaker re [19-2] jgm entered for defs against plf dismissing case, parties to pay own costs (cc: all counsel); entry date: 8/31/93 (yk) |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 10/27/93 | 21 | NOTICE OF APPEAL by defendants in re memorandum opinion and order [19-2] of 8/30/93; Notice of transcript order form due 11/8/93; Notice mailed to all counsel on 10/27/93 (gc) [Edit date 08/06/96] |
| | | * * * * * |
| 10/28/93 | 22 | NOTICE OF APPEAL by plaintiff Federal Election Com in re order and memorandum of decision [19-2] of 8/30/93; Notice of transcript order form due 11/8/93; Notice mailed to all counsel on 10/28/93 Fee Status: USA (dh) [Edit date 08/06/96] |
| 11/2/93 | 23 | Case No. 93-1433 assigned by the Court of Appeals. [21-1] (gc) [Entry date 11/03/93] |
| 11/2/93 | 24 | Case No. 93-1434 assigned by the Court of Appeals. [22-1] (gc) [Entry date 11/03/93] |
| | | * * * * * |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 9/15/95 | 28 | MANDATE from the Court of Appeals; CA # 93-1433 and 93-1434; Dt issued 9/14/95; JUDGMENT dated 6/23/95 reversing the decision of the District Court and remanding w/ instructions that the Disctrict Court enter judgment in favor of FEC and for a determination under 2 USC 437g(a)(6) of the appropriate civil penalty. re: [Appeal [22-1], [Appeal 21-1]; Mandated order deadline set for 11/14/95 (gc) [Entry date 09/18/95] |
| | | * * * * * |
| 10/6/95 | 32 | NOTIFICATION from Court of Appeals regarding Petition for Writ of Certiorari Filed in US Supreme Court on 9/21/95 Case No 95-489 (re appeal [22-1], (re appeal [21-1] (gc) |
| 1/25/96 | 33 | LETTER (Re: [22-1], [21-1]) from USCA advising that Supreme Court has granted the petition for writ of cert. (gc) [Entry date 01/26/96] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | * * * * * |
| 8/5/96 | 39 | RECALL of mandate from Court of Appeals CA #93-1433 & 93-1434; Date issd 8/2/96. Pursuant to judgment of the Supreme Court . . . mandate issued 9/14/95 is recalled. Jgm of 6/23/95 is vacated re: appeal [22-1], appeal [21-1] (gc) [Entry date 8/06/96] |
| | | * * * * * |
| 11/14/96 | 44 | MANDATE from the Court of Appeals; CA # 93-1433 & 93-1434; Dt issued 11/12/96; JUDGMENT dated 9/20/96 remanding the decision of the District Court [Appeal [22-1], appeal [21-1] (gc) [Entry date 11/15/96] |
| | | * * * * * |
| 11/27/96 | 46 | First Amended COUNTERCLAIM by dfts CO Repblcn Fed Cmpgn, Douglas Jones against plaintiff Federal Election Com (tp) [Entry date 12/03/96] |
| | | * * * * * |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 3/3/97 | 58 | REPLY TO 1st Amended Compulsory COUNTERCLAIM [46-1] by counter-defendant Federal Election Com (tp) [Entry date 03/05/97] |
| | | * * * * * |
| 4/14/97 | 60 | MINUTE ORDER: by Judge Edward W. Nottingham; Prelim Pretrial Conf (status conf) set 5/23/97 vacated and reset for 8:15 5/22/97 in Room C-201 (cc: all counsel); entry date: 4/16/97 (tp) [Entry date 04/16/97] |
| 4/21/97 | 61 | Memo BRIEF by Federal Election Com in opposition to motion for protective order re disclosure of certain political, personal & other information [59-1] (tp) [Entry date 04/22/97] |
| 4/21/97 | 62 | OBJECTIONS by Republican Party of State of LA to subpoena to produce & permit inspection of documents (tp) [Entry date 04/22/97] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 4/22/97 | 63 | MOTION by cntdft Federal Election Com to extend time for discovery to 2/28/98 (tp) [Entry date 04/24/97] |
| 4/22/97 | 64 | Certificate of Compliance by cntdft Federal Election Com re motion to extend time for discovery to 2/28/98 [63-1] (tp) [Entry date 04/24/97] |
| 4/30/97 | 65 | REPLY by cntdft CO Rpblcn Fed Cmpgn to opposition to motion for protective order re disclosure of certain political, personal & other information [59-1] (tp) [Entry date 05/05/97] |
| 4/30/97 | 66 | BRIEF by counter-claimant CO Rpblcn Fed Cmpgn in opposition to motion to extend time for discovery to 2/28/98 [63-1] (tp) [Entry date 05/05/97] |
| 5/1/97 | 67 | Stipulation and ORDER by Judge Edward W. Nottingham re extension of time to depose John Heubusch & Maria Cino to 5/8/97 (cc: all counsel); entry date: 5/5/97 (tp) [Entry date 05/05/97] |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 5/2/97 | 68 | MOTION by cntdft Federal Election Com to extend time for fact discovery for purpose of deposing Haley Barbour (tp) [Entry date 05/05/97] |
| 5/2/97 | 69 | Certificate of Compliance by counter-defendant Federal Election Com re motion to extend time for fact discovery for purpose of deposing Haley Barbour [68-1] (tp) [Entry date 05/05/97] |
| 5/5/97 | 70 | MOTION by non-parties Republican Natl Committee, Natl Republican Congressional Committee, Natl Republican Senatorial Committee, Maria Cino & John Heubusch for attorney Michael A. Dawson to appear pro hac vice (tp) [Entry date 05/07/97] |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | * * * * * |
| 5/5/97 | 71 | MOTION by non-parties Republican Natl Committee, Natl Republican Congressional Committee, Natl Republican Senatorial Committee, Maria Cino & John Heubusch for attorney Bobby R. Burchfield to appear pro hac vice (tp) [Entry date 05/07/97] |
| 1/23/98 | 123 | MOTION by counter-defendant Federal Election Com for summary judgment, and to dismiss and cntclm w/prej. (jj) [Entry date 01/26/98] |
| | | * * * * * |
| 1/23/98 | 132 | MOTION by defendant CO Rpblcn Fed Cmpgn, counter-claimant CO Rpblcn Fed Cmpgn for summary judgment (jj) [Entry date 01/28/98] |
| | | * * * * * |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 1/23/98 | 140 | Consent MOTION by plaintiff Federal Election Com, defendant CO Rpblcn Fed Cmpgn to dismiss Douglas L. Jones from action (jj) [Entry date 01/28/98] |
| 1/27/98 | 141 | ORDER by Judge Edward W. Nottingham granting motion to dismiss Douglas L. Jones from action [140-1] dismissing party Douglas Jones, party Douglas Jones (cc: all counsel); entry date: 1/28/98 (jj) [Entry date 01/28/98] |
| | | * * * * * |
| 2/27/98 | 157 | REPLY by counter-claimant CO Rpblcn Fed Cmpgn to response to motion for summary judgment [132-1] (jj) [Entry date 03/02/98] |
| | | * * * * * |
| 2/18/99 | 180 | MEMORANDUM, OPINION, AND ORDER: by Judge Edward W. Nottingham denying motion for summary judgment [123-1], denying motion to |



| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | dismiss and cntclm w/ prej [123-2], granting motion for summary judgment [132-1], granting motion for order to correct transcript [167-1] and clk shall forthwith enter jgm declaring that party Expenditure Provision is unconstitutional and cannot be enforced against dft (cc: all counsel); entry date: 2/18/99 (jj) |
| 2/18/99 | 180 | MEMORANDUM, OPINION, AND ORDER: by Judge Edward W. Nottingham denying motion for summary judgment [123-1], denying motion to dismiss and cntclm w/prej [123-2], granting motion for summary judgment [132-1], granting motion for order to correct transcript [167-1] and clk shall forthwith enter jgm declaring that party Expenditure Provision is unconstitutional and cannot be enforced against dft (cc: all counsel); entry date: 2/18/99 (jj) |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 2/23/99 | 181 | JUDGMENT: Approved as to Form by Edward W. Nottingham, USD Judge For the Court by Clerk James R. Manspeaker denying motion for summary judgment [123-1], granting motion for summary judgment [132-1], granting motion for order to correct transcript [167-1] party expenditure procvison is unconstitutional and cannot be enforced against dft and each party to bear own costs dismissing case (cc: all counsel); entry date: 2/23/99 (jj) |
| 4/22/99 | 182 | NOTICE OF APPEAL by counter-defendant Federal Election Com judgment [181-2] of 2/23/99 |



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-CV-1159

FEDERAL ELECTION COMMISSION,
999 E STREET, N.W.
WASHINGTON, D.C. 20463
(202) 219-3690, PLAINTIFF,

*v.*

COLORADO REPUBLICAN FEDERAL
CAMPAIGN COMMITTEE,
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(303)893-1776

AND

DOUGLAS L. JONES,
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DENVER, COLORADO 80204
(303) 893-1776, DEFENDANTS.

DEFENDANTS' FIRST AMENDED COMPULSORY COUNTERCLAIM

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Campaign Committee

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 89-N-1159

FEDERAL ELECTION COMMISSION, PLAINTIFF,

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE, ET AL., DEFENDANTS.

**DEFENDANTS' FIRST AMENDED COMPULSORY COUNTERCLAIM**

For its First Amended Counterclaim the Colorado Republican Federal Campaign Committe ("State Party") and its Trasurer, Mr. Douglas L. Jones, incorporate herein the averments and allegations of their Answer in this action and further aver as follows:

**Jurisdiction**

47. This counterclaim seeks to protect the right of the State Party and its adherents to speak and associate freely with and for Party candidates for federal office. The rights asserted arise under the First Amendment to the United States Constitution and the Federal Election Campaign Act ("FECA"). Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and § 1367 (supplemental). The Supreme Court's earlier ruling in this case



recognized that jurisdiction exists over the actual controversy alleged in this counterclaim.

**Parties**

48. Counterclaim plaintiff, the State Party, is a political party. Its purposes are to advance Republican goals, vlaues, and principles in Colorado and to support Republican candidates for federal office from Colorado. It is funded by voluntary contributions from individuals who support its purposes and who wish to associate with other like minded individuals to speak out in support of Party candidates or in opposition to other candidates.

49. Counterclaim plaintiff, Mr. Jones, is Treasurer of the State Party, a resident and citizen of Colorado, a registered Republican voter, and an adherent of the State Party.

50. Counterclaim defendant, the Federal Election Commission ("FEC"), is an agency of the United States charged with enforcing the Federal Election Campaign Act ("FECA").

**FECA Limits**

51. Section 441a(d) of FECA imposes a special limit on expenditures by parties in connection with federal elections. The Supreme Court in this action has held the § 441a(d) limit unconstitutional as applied to expenditures by the State Party that are independent of its candidates. The Supreme Court remanded the issue of whether, in light of that ruling, § 441a(d) limits coordinated expenditures by a party and, if so, whether those limits are constitutional.

52. Section 441a(a)(2) of FECA limits a "multicandidate political committee" to a maximum contribution of $5,000 to any federal candidate or campaign in any year. Section 441a(a)(7)(B)(i) provides that an expenditure made "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" is deemed to be a contribution. The FEC contends that, to the extent that a party's expenditure in connection with a federal election is neither independent nor authorized by § 441a(d) or § 441a(a)(2) and § 441a(a)(7)(B)(i), or otherwise, those limits are referred to herein as the "FECA Limits." This counterclaim seeks to invalidate all such FECA Limits to the extent they apply to expenditures by political parties.

**Injury**

54. By history and tradition the State Party, like other political parties, engages in joint political activity with its candidates for federal office. This joint activity includes "coordinated expenditures" which, as used herein, refers to expenditures that (i) are made in cooperation, consultation, or concert with, or at the request or suggestion of, the Party's federal candidates, their political committees, or their agents, (ii) are made using funds lawfully received from sources and in amounts allowed by FECA, and (iii) are made in connection with a general election for federal office.

55. The FEC historically has enforced the FECA Limits against parties that make coordinated expenditures. Indeed, this proceeding commenced as such an action by the FEC. The FEC complaint herein asserts that the FECA Limits restrict the State Party's coordinated expenditures. The FEC's general counsel has stated that consultations between a party and its candidates will disable the party from making independent expenditures in support of those candidates. Draft Advisory opinion 1996-30, *FEC Agenda Document #96-85*. The State Party faces a credible threat that the FECA Limits will be enforced against it if it makes expenditures that the FEC deems coordinated and that exceed the FECA Limits. Violation of the FECA Limits threatens substantial civil sanctions or, in some circumstances, criminal penalties.



56. The State Party's coordinated expenditures serve to communicate the Party's political views and other information to the Party's adherents and to the voters of Colorado, including Mr. Jones. The State Party can communicate its message much more efficiently and effectively if it is able to coordinate with its candidates. Similarly, voters receive a clearer and more coherent picture if the State Party and its candidates can coordinate their speech. The coordination of expenditures is an important means of political association as well as of political speech.

57. Since at least the general election of 1986, the State Party has been ready, willing, and able to make coordinated expenditures in excess of the FECA Limits, and it is and will remain ready, willing, and able to do so in 1998, 2000, and beyond. However, the State Party has been and remains chilled and deterred from making coordinated expenditures in excess of the FECA Limits by the credible threat that the FECA Limits will be enforced by the FEC or by a private complainant.

58. The FEC's general counsel has asserted a broad, though no clearly defined, understanding of the meaning of coordination. Even a successful defense of an expenditure as noncoord nated is likely to be burdensome and intrusive. The State Party has been and is chilled and deterred from engaging in activity that is not coordinated but that may be so characterized by the FEC or private complainants. Voters have thus been denied the ability to receive such speech and the ability of State Party adherents to associate for such purposes has been impaired.

59. The FECA Limits have the present and immediate effect of chilling and deterring the State Party's planning for coordinated speech. Also, the State Party's present speech is chilled and deterred by the risk that expenditures later will be held to be coordinated and counted against the Party's FECA Limits for the next elections.

60. The injuries thus suffered by the State Party, its adherents, and the voters of Colorado have been and are serious and irreparable. The injury will increase in severity as the 1998 election cycle advances, and further important opportunities to speak on vital political matters will be irrevocably lost (as already has occurred) until and unless relief is granted by the courts. The State Party and Mr. Jones have no adequate remedy at law.

**Severability**

61. Contrary to the FEC's position, when FECA is properly construed in light of the Supreme Court's earlier ruling in this case, it imposes no FECA Limits on coordinated expenditures of the State Party or of



other similar parties. The FEC's attempts and intent to impose such limits are unconstitutional, unlawful, and void.

62. Section 441a(d) imposes a unitary limit that does not distinguish between independent and coordinated expenditures. The Supreme Court's ruling that the limits imposed by § 441a(d) are unconstitutional as applied to independent expenditures invalidates the entire limit provision of § 441a(d) in all applications.

63. The invalidity of the limits imposed by Section 441a(d) does not invalidate the provision exempting parties such as the State Party from other FECA Limits. Alternatively, those other limits are not severable from the unconstitutional limit imposed by § 441a(d) and likewise are invalid.

**First Amendment Violations**

64. Contrary to the FEC's position, the First Amendment forbids the government to limit the State Party's coordinated expenditures. The FEC's attempts and intent to impose or enforce any limit on such coordinated expenditures are unconstitutional, unlawful and void.

65. To the extent that FECA Limits established by § 441a(d) or § 441a(a)(2) and § 441a(a)(7)(B)(i), or otherwise, survive the Supreme Court's earlier ruling in this case, each such limit violates the First Amendment (i) facially, (ii) as applied to political parties such as the State Party, and (iii) as interpreted by the FEC.

a. No compelling governmental interest justifies limiting the ability of the State Party to coordinate with

its candidates in the expenditure of lawfully received funds that the State Party could expend independently in support of those same candidates. In particular, such coordination does not give rise to compelling concerns about corruption, nor did Congress impose any FECA Limits on political parties because of corruption concerns.

b. If any such compelling interest were to be established, it could be adequately served by other less intrusive and burdensome means than the FECA Limits.

c. The FECA Limits are impermissibly vague and overbroad and are not narrowly tailored to any compelling interest.

d. The FECA Limits were imposed for the unconstitutional purposes of reducing the amount of political speech by political parties and equalizing the amount of speech by competing viewpoints.

e. The unconstitutional effects and nature of the FECA Limits are compounded by the low dollar limits established.

WHEREFORE the State Party and Mr. Jones request the following relief:

A. A declaratory judgment pursuant to 28 U.S.C. § 2201 that the State Party has the right to make unlimited expenditures from lawfully received contributions in support of its candidates for federal office, and that any limits that FECA purports to impose are invalid and void.



B. Appropriate further relief pursuant to 28 U.S.C. § 2202 and the Court's equitable powers, including if necessary a preliminary injunction to protect the State Party and Mr. Jones from further irreparable injury pending the final outcome of this case.

C. An award of costs and fees and such other relief is just.

Respectfully submitted,

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Colorado Republican Federal
Campaign Committee

November 26, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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Civil Action No. 89-N-1159

FEDERAL ELECTION COMMISSION, COUNTER-DEFENDANT

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE, COUNTER-PLAINTIFF

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**FEDERAL ELECTION COMMISSION'S RESPONSE TO THE COLORADO PARTY'S STATEMENT OF UNDISPUTED FACTS AND SUPPORTING EXHIBITS**

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The following is the Federal Election Commission's (the "FEC" or "Commission") response to the statement of undisputed facts submitted by the Colorado Republican Federal Campaign Committee ("Colorado Party"). The Commission disagrees with many of the conclusions asserted by the Colorado Party but does not believe that any of the Colorado Party's proffered facts creates a genuine dispute of a material fact that would necessitate a trial. For example, the Colorado Party offers as facts their own characterizations and quotations from the academic experts in this case, Professors Alexander, Corrado, Sorauf, Krasno and Wilcox. In virtually every instance, these references are to the conclusions and value judgments of these professors and not to particular facts or observations. These opinions are presumably offered to assist the Court to understand the evidence, Fed. R. Evid. 702, and as opinions, are not facts that are susceptible to being admitted or denied, except to acknowledge that these are, in fact, the opinions of experts. *See United States v. Hardage*, 982 F.2d 1436, 1444 (10th Cir. 1992), *cert. denied*, 510 U.S. 913 (1993) (where a party has presented a prima facie case, the opposing party's summary judgment opposition "in the form of [conclusory] expert witness affidavits does not make it any more significant than a simple denial made in a pleading and as such is insufficient to defeat summary judgment"). This is in contrast to the facts underlying an expert's opinion, Fed. R. Evid. 703, which in the few places proffered by the Colorado Party, can be admitted or denied. The Colorado Party also submits quotations from statutes and regulations, and their own characterization of the law as facts. These also are not facts that can be admitted or denied.



For the Court's convenience, the Colorado Party's proposed facts are repeated in *italics* followed by the Commission's response. Where the Commission denies a proffered fact, the opposing facts in the Federal Election Commission's Statement of Material Facts Not in Genuine Dispute and the Supplement are denoted as "FEC facts."

*1. Pursuant to the Supreme Court's earlier ruling in this case, political parties may make unlimited "independent" expenditures in support of their congressional candidates provided they do so using "hard" money. However, the FEC takes the position that if a party's spending in connection with a congressional election is coordinated in any way with the party's*

*candidate, then the limitations of § 441a(d) of the Federal Election Campaign Act of 1971, as amended, ("FECA"), 2 U.S.C. §§ 431-455, still apply. Under those limits, a party may spend only pennies per voter; it cannot even send a single letter to each voter or even every party member. Corrado Rpt. at 17.*

The first sentence is a legal conclusion to which NO RESPONSE IS REQUIRED. As to the second sentence, the FEC's position is stated in its briefs in this matter. The FEC ADMITS that the third sentence is based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the statement speaks for itself. To the extent Prof. Corrado's statement supports the calculation described, including the assumptions and qualifications underlying the calculation, the FEC ADMITS that statement.

*2. The specific limitations of § 441a(d) are in pertinent part as follows:*

*The National committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—*

*(A) in the case of a candidate for election to the office of Senator, or Representative from a State which is entitled to only one Representative, the greater of—*



*(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or*

*(ii) $20,000; and*

*(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.*

This paragraph is a statement of law to which NO RESPONSE IS REQUIRED.

*3. The Colorado Party is the standing arm of the Republican Party in the State of Colorado with primary responsibility for federal elections. The Colorado Party is ready, willing, and able to spend more money in connection with elections to federal office and in coordination with party candidates than is permitted by § 441a(d). Bain Decl. at ¶ 3. The Colorado Party has been chilled and deterred from making such coordinated expenditures by its well founded fear that defendant FEC will initiate an enforcement action against it. Id. at ¶¶ 3-6; Benson Aff. at ¶¶ 4-5. Indeed, the FEC's expert witnesses agree that, in the absence of FECA's limits on coordinated spending, "we would see a dramatic increase in party coordinated spending" because "coordinated spending is already the avenue of choice . . . freeing it from limits will make it the choice of all." Sorauf/Krasno Rpt. at 44, 46.*

The FEC ADMITS the first sentence. The FEC admits that the second sentence is Bain's opinion of possible future events, but notes that the current financial state

of the Colorado Party as reported to the Commission does not indicate the capability to make the proffered expenditures. See FEC facts 17, 30 and 31. The FEC ADMITS that the third sentence is Bain's opinion of his state of mind, which the FEC does not contest. The FEC ADMITS that the fourth sentence is the opinion of Professors Sorauf and Krasno. As opinion, THE FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

**The Unique Role Of Political Parties**

4. *Political parties are "essential to the vitality of American democracy," Corrado Rpt. at 1, and are "essential democratic institutions." Sorauf/Krasno Rpt. at 38. Parties are "the principal intermediaries between the citizenry and government. They organize large numbers of individuals and political groups into collectives of active political participants and combine the diverse and diffuse views of individual members into broad-based expressions of political speech. In doing so, they help translate the needs and desires of the general public into political positions and public policies that form the basis of civic debate and government action." Corrado Rpt. at 1. "Without parties, individuals in mass society are atomized and ineffectual." Alexander Rpt. at 30.*

The FEC ADMITS that this paragraph is based upon the opinion of expert witnesses in this case. As opinion,



the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves.

5. *The "unique and crucial role" of American political parties includes (a) "enabl[ing] citizens to participate coherently in [our] system of government," (b) "bring[ing] fractured and diverse groups together as a unified force," (c) "provid[ing] continuity that lasts beyond terms of office," and (d) "encouraging debate and discussion of the issues." Sorauf/Krasno Rpt. at 38; see also Corrado Rpt. at 4-5 (parties promote political discussion, inform voters, enhance the accountability and responsibility of the political system, socialize citizens, and unify our highly fragmented system of government).*

The FEC ADMITS the facts but does not take a position on the opinion about unique and crucial. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY.

6. *FEC expert witness Frank Sorauf wrote, "'Political parties . . . are the only devices thus far invented by the wit of Western man that can, with some effectiveness, generate countervailing collective power on behalf of the many individually powerless against the relatively few who are individually or organizationally powerful. . . .' The political party, in other words, is the political organization of the masses who lack the cues and information—as well as the political resources of status, skills, and money—to make a major impact on public decisions via other means." Frank Sorauf, Party Politics in America at 429-30 (1984) (quoting Walter Dean Burnham, The End of American Party Politics, Trans-action, Dec. 1969, at 20; see also*

*Alexander Rpt. at 29 ("One of the roles of political parties is to advocate public policies that would assist" "the poor, the black, [the] consumer[], [the] youth and the elderly.").*

The FEC ADMITS that this was the opinion of Prof. Sorauf in 1984. The FEC ADMITS that the parenthetical is the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY.

7. *Congress recognizes and endorses the importance of parties. "One of the things Congress was concerned about was that [FECA] not restrict party activity unduly. [It a]lready place[d] excessive regulatory burdens on them. That is one of the reasons we got the amendments to the [A]ct. . . . That is one of the reasons why Congress in '79 changed [the law,] especially the definition of contribution and expenditure to free up the parties to spend monies on ["party building, or get out the vote, or traditional . . . campaign paraphernalia, bumper stickers or buttons or slate cards"] as a way to ensure that we could have robust debate[,] competition[,] party building and voter outreach. That's all essential." Corrado Dep. at 42-43.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; his testimony speaks for itself.

8. *The unique role and status of American political parties is recognized by Congress. FECA defines "political party" to mean "an association, committee or organization which nominates a candidate for election to any Federal Office, whose name appears on the election ballot as the candidate of such association, committee, or organization." § 431(16). FECA also defines "national committee" as the body "responsible for the day-to-day operation of such political party at the national level," § 431(14), and "state committee" as the corresponding body "at the state level," § 431(15).*



Whether political parties roles are unique is an opinion, which the FEC NEITHER ADMITS NOR DENIES. The remainder of the first sentence and the second and third sentences represent statements or conclusions of law which the FEC NEITHER ADMITS NOR DENIES; the statute speaks for itself.

9. *FECA includes a number of provisions in which parties are dealt with separately from other participants in the political process. E.g., § 431(8)(B), (9)(B) (authorizing "grass-roots" political activities); § 441a(a) (permitting individuals to contribute more money to a party than to a candidate or to other political committees); § 441a(d) (creating, in part, an exception to the expenditure and contribution limitations thereby allowing parties to make limited "expenditures in connection with the general election campaigning of candidates for Federal office"); see also S. Rep. No. 93-689, p. 7 (1974) ("[A] vigorous party system is vital to American politics . . . . [P]ooling resources from many small contributors is a legitimate function and an integral part of party politics.").*

This paragraph contains statements or conclusions of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY.

10. *Likewise, the regulations adopted by the FEC acknowledge the special status of political parties.* See, e.g., *11 CFR § 110.1(c) (1997) (providing that individuals may make contributions of up to $20,000 to political parties); § 110.2 & .3 (identifying various contribution limits for national and state political parties); § 110.7 (stating political party expenditure limitations).*

This paragraph contains statements or conclusions of law, which the FEC IS NOT REQUIRED TO ADMIT OR DENY.

11. *Similarly, the Supreme Court has long recognized the importance of political parties.* E.g., Tashjian v. Republican Party of Conn., *479 U.S. 208, 214-16 (1986). In the instant case, Justice Kennedy explained that "[p]olitical parties have a unique role in [ensuring "that debate on public issues [are] uninhibited, robust, and wide-open']; they exist to advance their members' shared political beliefs."* Colorado, *116 S. Ct. at 2322 (Kennedy, J., concurring in the judgment and dissenting in part) (quoting* New York Times Co. v. Sullivan, *376 U.S. 254, 270 (1964)). The Supreme Court plurality in this case similarly recognized that "the legislative history demonstrates Congress' general desire to enhance what was seen as an important and legitimate role for political parties in American elections."* Id. *at 2317;* see also Federal Election Comm'n



v. Democratic Senatorial Campaign Comm., *454 U.S. 27, 41 (1981) (concluding that § 441a(d)(3) was part of a "general scheme" intended to "assur[e] that political parties will continue to have an important role in federal elections").*

This paragraph contains statements or conclusions of law, which the FEC IS NOT REQUIRED TO ADMIT OR DENY.

12. *"The chief function parties perform is to contest elections." Corrado Rpt. at 2. Their distinctive objective is to build legislative majorities and help to organize government.* Id. *at 4, 21. "Parties seek to communicate their views and coalesce diverse interests behind policy positions predominantly through electoral activity. Party organizations concentrate a substantial share of their resources and activities on political campaigning. They play a central role in recruiting candidates, raising campaign funds, communicating information to voters, and encouraging citizens to vote. They develop messages and platforms designed to appeal to broad-based majorities in an effort to win elections and build legislative majorities. These messages provide voters with outlooks that help them comprehend the choices available and structure their decision making. In particular, the parties provide citizens, especially those who identify themselves as party supporters, with perceptual frameworks and voting cues that help them assess candidates and issues."* Id. *at 1;* accord *Alexander Rpt. at 9; § 431(16) (defining "political party" as "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears*

*on the election ballot as the candidate of such association, committee, or organization").*

The FEC ADMITS the activities of parties described in sentences one through eight, but the characterization of those activities are based on the opinion of expert witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves. The ninth sentence is a statement of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY.

13. *Timothy Wirth, FEC witness and former Senator, concurred, "[P]olitical parties can do a good job in terms of helping to focus debate," but warned that because political parties are having a difficult time playing "that kind of role" anymore, that the media, and "any kind of a middle man" may be taking over that role now. Wirth Dep. at 55-56. Similarly, Professor Herbert Alexander stated, "[P]reventing parties from electioneering will only leave message presentation up to uncontrollable and unaccountable special interests." Alexander Rpt. at 26.*

The FEC ADMITS the first sentence. The FEC ADMITS that the second sentence is based on the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.



14. *"American political parties are among the oldest in the world, but their power has waned in the last half century. Historically, the parties suffered when civil service and professionalization replaced patronage; when primaries took candidate selection out of their hands; when government began to provide social services the urban party organizations used to attract the allegiance of voters; when television focused dramatically on the candidate independent of his or her party; when immigration declined, the movement to the suburbs accelerated, and urban party organizations lost some of their support and reasons for being; when education led to the ethic to vote for the 'better person', [sic] however perceived, leading to increased ticket-splitting." Id. at 9. "The diminished power of the parties makes the game of politics more difficult for the [powerless electorates] to play and win. Finally, the continued decline of the parties would rob the political system of an important building of majorities. . . . With weakened parties how are we to find majorities in a fragmented politics?" Frank Sorauf, Party Politics in America at 430.*

The FEC ADMITS sentences one through eight are based on the opinion of expert witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves.

15. *The increasing complexity and lack of clarity of FECA has also burdened parties to the extent that many state parties are hesitant to assist federal candidates. Howard ("Bo") Callaway, former chairman of the Colorado Party stated that with "federal candidates, which come under the FEC, there are rules that*

*to the average nonlawyer state chairman are so complex and so difficult that many people just say I just won't play in that league. . . . You always run the risk of being harassed, of having the opponent complain you violated the law, and defending yourself, and the whole gamut . . . is subject to federal laws that are seen to be extremely complex. . . . Many states . . . say, 'Look, it is tough enough anyway, we don't play in the federal game.' That is a shame. Parties should play in the federal game. Parties are designed to help [candidates, but] the rules make it so complex [that] it is very difficult." Callaway Dep. at 53-55.*

The FEC ADMITS that this represents the opinion of Mr. Callaway. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY.

16. *The expert witnesses and party witnesses recognize the crucial role of political parties. FEC expert witness Frank Sorauf declared that "the two great national parties bring a unifying, centripetal force. . . . Their similar symbols and traditions . . . are a force for unity in governmental institutions marked by decentralization and division." Party Politics in America at 15. Professor Anthony Corrado opined, "[P]arties play a fundamental role in the organization of elections" and "have a recognized status under law that is not shared by other organized political groups." Corrado Rpt. at 8. In short, "'there is no America without democracy, no democracy without politics, and no politics without parties.'" Alexander Rpt. at 8 (quoting Clinton Rossiter, Parties and Politics in America 1 (Cornell University Press, 1960); see also*



*Coelho Dep. at 19-21, 105; Simon Dep. at [illegible]; Wirth Dep. at 54-56.*

The FEC ADMITS the first sentence except that the characterization "crucial" is an opinion. The FEC ADMITS that the second through fifth sentences are based on the opinions of expert witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports and other writings speak for themselves.

**Party Finances – Hard Money, Soft Money, Disclosure**

17. *American political parties "have no money of their own." Sorauf/Krasno Rpt. at 37; see Corrado Rpt. at 8. In contrast to economic entities, their ability to spend in support of their candidates depends entirely on their ability to attract voluntary contributions, which, in turn, depends directly on their level of popular support. See Sorauf/Krasno Rpt. at 37, 42. Party conduct disapproved of by the public translates into reduced contributions. Sorauf/Krasno Rpt. at 42. Professor Corrado notes, as an example of this, that approximately 200,000 donors to the Republican National Committee ("RNC") ceased giving during the Bush administration. Corrado Dep. at 71. The RNC realized that it was not appealing to its base. Id. By being responsive to this indicator, the RNC "not only brought back those 200,000 small donors, but added in 200,000 new smaller donors to give themselves a very broad base of support, that was the base of the strength they had entering [the] '96 election." Id. at 72. A corporation, in contrast, is lawfully enabled by its*

*corporate form to amass "large aggregations of wealth" based on approval in the marketplace rather than the public's support of its policy positions or its political contributions. Id. at 91.*

The FEC ADMITS the facts described in this paragraph but the characterizations of those facts are the opinions of expert witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves.

18. *"Hard money" is the common term for the limited, disclosed funds parties raise from individuals and political committees in conformity with FECA limits. FECA currently permits parties to use hard money in restricted amounts for expenditures "in connection with" a federal election. § 441a(d). Only hard money may be used by parties to expressly advocate the election or defeat of federal candidates . Id.*

The FEC ADMITS that "hard money" is a common term. The remainder of this paragraph contains statements or conclusions of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY.

19. *Parties may accept hard money contributions only from specified sources and in limited amounts. Individuals may contribute an aggregate amount of $25,000 per year to federal candidates and campaigns, and federal and state parties. § 441a(a)(3). Of this, no more than $20,000 may go to any national party, and*



*no more than $5,000 may go to any state party. § 441a(a)(1)(B), (C). Corporations and unions may not contribute hard money. § 441b(a). However, their political action committees ("PACs") may contribute up to $15,000 per year to a national party and $5,000 per year to a state party with no aggregate limit. § 441a(a)(2)(B), (C).*

This paragraph contains statements or conclusions of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY.

20. *"Soft money" is the term commonly applied to contributions given to political parties from sources or in amounts that FECA does not regulate. These funds may be spent for state election activity and non-election activity such as issue advertising, "get out the vote" campaigns, and other party building activities. § 431(8)(B). Soft money may not be used "in connection with" federal elections and hence it may not be used for coordinated or independent expenditures. Thus, soft money expenditures are not at issue in this case. Corrado Dep. at 35-36.*

The FEC ADMITS that "soft money" is a common term. The remainder of this paragraph contains statements or conclusions of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY. The last sentence is a statement of the Colorado Party's position in this litigation, which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY.

21. *Political issue advocacy describes political speech that may mention specific political parties or even candidates but does not "expressly advocate" the election or defeat of a clearly identified federal candidate. Buckley, 424 U.S. at 42; Federal Election Comm'n v. Christian Action Network, Inc., 110 F.3d 1049, 1051-53, 62 (4th Cir. 1997). "Issue ads" are an increasingly controversial phenomena due to several factors. First, the large amounts of money spent by organizations and interest groups in the 1996 elections piqued the public interest. Second, despite the impact these ads can have on federal elections, because they are not deemed to be "in connection with a federal election," no organization is exempted from making these ads, there are no limits on how much can be raised or spent, and there are no requirements that sponsoring organizations disclose the sources of their funding, or where or how it was spent. Nonetheless, issue ads are also not at issue in this case.*

The first sentence is a statement of law, which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY. Sentences two through four are unsubstantiated by any evidence in the record; therefore, the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY. Furthermore, they represent some unknown person's opinions, which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY. The last sentence is a statement of the Colorado Party's legal position in this case, which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY.



22. *Party expenditures expressly advocating the election or defeat of a federal candidate may be either "independent" or "coordinated."*

This is a statement or conclusion of law, which does not require a response; but if one were required the FEC would ADMIT the statement in this paragraph.

a. *The term "independent expenditures" describes hard money expenditures expressly advocating the election or defeat of a federal candidate, see 11 CFR 100.22(a), that are not coordinated with the candidate. 11 CFR 109.1. As applied to parties, "[i]ndependent spending [] requires the party committee to stay at a safe distance from the candidate and the candidate's campaign plans and strategies." Sorauf/Krasno Rpt. at 45.*

The first sentence is a statement of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY. The FEC ADMITS that the second sentence is based on the opinion of Profs. Sorauf and Krasno. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

b. *The term "coordinated expenditures" is commonly used to describe hard money expenditures by a political party that are (i) coordinated with a candidate and (ii) in "connection with the general election campaign of candidates for Federal office." § 441a(d)(1). "[A]ll coordinated expenditures have to be disclosed. Any monies that the parties spend on behalf of can-*

*didates are disclosed . . . in great detail." Corrado Dep. at 291.*

The first sentence is a statement of law which the FEC IS NOT REQUIRED TO EITHER ADMIT OR DENY. The FEC ADMITS the second sentence.

23. *"The hard monies that are used for coordinated expenditures are generated through ongoing fundraising operations that include direct mail solicitations, telemarketing efforts, party fundraisers, an annual congressional dinner, and the solicitation of individual donors. The vast majority of the monies used for coordinated expenditures are generated through contributions of relatively small amounts from individual donors." Corrado Rpt. at 20; see Barbour Dep. at 22-23, 39 (noting that more than 70 percent of the Republican National Committee's ["RNC"] revenue came in contributions of $100 or less and that PAC contributions made up only about one percent of the RNC's total revenue).*

The FEC ADMITS that funds are raised in the manner described, but the characterizations of the relative amounts and the suggestion that this is an all inclusive list in the first and second sentences are based on the opinion of Prof. Corrado; to the extent these facts are supported by his statement, the FEC ADMITS them. With respect to the statements regarding RNC fundraising by Mr. Barbour during his tenure as Chairman, the FEC ADMITS.



24. *Most of the hard money raised by the two national political parties through their national party committees comes from individual donors whose average contribution size is under $40. Coelho Dep. at 24, 36; Heubusch Dep. at 99; cf. Barbour Dep. at 23 (stating that the RNC was "averaging about $50 a contribution"). These hard money contributions overwhelmingly result from direct mail solicitations. Barbour Dep. at 22; Cino Dep. at 53, 77; Coelho Dep. at 23-24, 36. Similarly, with state parties "the [fundraising] effort is a lot of grass roots [such as] small donor via telephone and direct mail." Hesse Dep. at 25.*

With respect to the first sentence the FEC ADMITS that Mr. Coelho described the average size of DCCC donations during his tenure as Chairman in the 1980's, and that Mr. Heubusch and Mr. Barbour described the size of average donations to the NRSC and the RNC respectively during their tenure on those committees. The FEC ADMITS the second and third sentences.

25. *The mail solicitation process both raises party funds and engages contributors directly in the formulation and advancement of party policy. Coelho Dep. at 23-24. The process "is administratively very expensive. Usually a first round of direct mail is a net loss, with far more spent on administrative costs than is received in contributions. . . . Direct mail fundraising makes its money on the second, third and subsequent mailings to that group of known givers." California Prolife Council Political Action Comm. v. Scully, No. Civ. S-*

*96-1965, Findings of Fact, at ¶ 99 (E.D. Cal. Jan. 6, 1998) (www.caed.uscourts.gov).*[1]

The first sentence incorrectly characterizes the testimony of Mr. Coelho, which speaks for itself, and therefore the FEC NEITHER ADMITS NOR DENIES. The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n.1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made. Furthermore, the Colorado Party has not submitted the evidence from the *Scully* case to this Court. We also note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non-federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal candi-

[1] *The opinion (available on Westlaw) is a separate document from the findings of fact (at time of writing, only available on the Internet) "because they consist of some 456 findings." California Prolife Council Political Action Comm. v. Scully, No. Civ. S-96-1965, 1997 WL 7173, at *15 n. 1 (E.D. Cal. Jan. 6, 1998). All references to Scully in the undisputed facts are to the findings of fact.*



dates, federal political committees, or the Colorado Party.

26. *In this case, the Colorado Party challenges limits imposed by FECA on party spending that is coordinated with candidates in connection with a federal election, a type of spending permitted only with hard money. The Colorado Party does not challenge FECA's prohibition on raising or spending soft money nor does it challenge provisions of FECA requiring parties to provide detailed reports to the FEC disclosing the sources, amounts, and expenditures of their money, both hard and soft. See § 434. These reports are available to the public and are regularly scrutinized by opposing parties and the media.*

The first two sentences are legal descriptions of the Colorado Party's position in this matter; therefore, the FEC NEITHER ADMITS NOR DENIES. THE FEC ADMITS the third sentence.

27. *This case concerns privately funded election campaigns. It does not challenge the coordinated expenditure restrictions in connection with publicly funded presidential elections.*

These sentences are legal descriptions of the Colorado's Party's position in this matter; therefore, the FEC NEITHER ADMITS NOR DENIES.

*Both documents, however, are provided in Volume III, Exs. U, V, for the convenience of the Court.*

**Parties And Their Candidates**

28. *"It is a natural relationship for parties and candidates to work together toward the common goal of winning elections." Alexander Rpt. at 25. FECA recognizes that candidates for federal office appear "on the election ballot as the candidate of such [political party]." § 431(16). The Supreme Court plurality in this case recognize the intimate relationship shared by political parties and the campaigns of party candidates. Colorado, 116 S. Ct. at 2317- 19; see also id. at 2323 (Kennedy, J. concurring in the judgment and dissenting in part) (noting that the fates of political parties and their candidates are "inextricably intertwined"). "This close relationship does not increase the risk of corruption, but rather encourages party committees to support with funding candidates who are faced with millionaire opponents, negative independent expenditures or negative issue advertising by independent groups." Alexander Rpt. at 25.*

The FEC ADMITS that the first and fourth sentences are based on the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; his report speaks for itself. The second and third sentences are statements or conclusions of law which the FEC NEITHER ADMITS NOR DENIES; the statute speaks for itself.

29. *The FEC long took the position that an expenditure by a party in connection with a federal election*



*was unavoidably an expenditure coordinated with the party's candidate. FEC Advisory Opinion 1988-22, Fed. Election Camp. Fin. Guide (CCH) ¶ 5932, p. 11,471 n. 4 (1988); see FEC Advisory Opinion 1985-14, Fed. Election Camp. Fin. Guide (CCH) ¶ 5819, p. 11,186 n. 4 (1985) ("Party political committees are incapable of making independent expenditures."); FEC Advisory Opinion 1984-15, Fed. Election Camp. Fin. Guide (CCH) ¶ 5766 p. 11,070 n. 2 (1984) (same); see also 11 CFR § 110.7(b)(4) (forbidding national and state party committees from making "independent expenditures in connection with the general election campaign[s]" for federal office) (repealed in the aftermath of Colorado). In making its ruling in this case the Supreme Court held that it was possible for parties to make independent expenditures that advocate the election or defeat of a candidate, so long as there is no coordination in fact. Colorado, 116 S. Ct. at 2315.*

This paragraph contains statements or conclusions of law which the FEC is not required to EITHER ADMIT OR DENY.

**Independent And Coordinated Spending**

30. *Independent expenditures are unnatural for parties and create an artificial separation of the party and its candidate. Alexander Rpt. at 25. Accordingly, a party now faces the quandary of how it can communicate with its candidates, "while at the same time not communicate when providing independent expenditures on behalf of its candidate or against its candidate's opponent." Id. at 26. The task of assuring that*

*such expenditures are not coordinated with a party's candidate has proven cumbersome, inefficient, and expensive. Corrado Rpt. at 35-37; Sorauf/Krasno Rpt. at 44; Bain Dep. at 46-47. "Independent expenditures are not natural acts for parties. The normal workings of parties include: recruiting candidates and writing platforms, raising funds to support those [] candidates and organizing voters." Alexander Rpt. at 25.*

The FEC ADMITS that this paragraph is based on the opinion of expert witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves.

31. *Assuring that expenditures are "independent" requires a party, whose natural role is to work closely with its candidates, "to stay at a safe distance from the candidate and the candidate's campaign plans and strategies." Sorauf/Krasno Rpt. at 45. This, of course inhibits "a unified message." Id.; see Corrado Rpt. at 37. The current system of unlimited independent spending and severely restricted coordinated spending places "enormous regulatory burdens" on parties and creates "a sloppy area of the law." Corrado Dep. at 54-56. Moreover, even where care is taken to assure that the expenditures are not coordinated, the inevitable close ties between party and candidate mean there is a constant threat that the FEC, perhaps at the instigation of the opposing party or candidate, will challenge the independence of the expenditure. Sorauf/Krasno Rpt. at 46; Bain Dep. at 47.*

This paragraph contains legal conclusions and the opinion of expert witnesses in this case. As legal conclusions and opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves.



32. *To avoid claims of coordination, each of the major party organizations in 1996 established a "separate entity that was solely responsible for making independent expenditures. Each party had to rent and furnish an office, hire staff, and pay other administrative costs. They had to engage additional consulting services and duplicate many of the functions already being undertaken by other party offices." Corrado Rpt. at 36-37; see Barbour Dep. at 100. This process was "cumbersome, complicated, and time-consuming." Corrado Rpt. at 37. These complications and arrangements "tend to isolate the party . . . from candidates [and] destroy[] the healthy relationship among candidates and parties whose labels they use." Alexander Rpt. at 25. Moreover, such independent expenditures "do not qualify for the lowest unit rates on the purchase of broadcasting time," as coordinated expenditures would. Corrado Rpt. at 37; see 47 U.S.C. § 315(b) ("The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period. . . ."); 47 CFR § 73.1942 (1997) (implementing and defining requirement that broadcasters sell advertising time to candidates at the lowest unit charge of the station); see also CBS, Inc. v. FCC, 453 U.S. 367, 379 (1981) (discussing the broadcast provisions of FECA, the Court stated that "all three measures, while differing in approach, were 'intended to increase a*

*candidate's accessibility to the media and to reduce the level of spending for its use'") (quoting FECA of 1971: Hr'gs on S.1, S. 382, and S. 956 before the Subcomm. on Communications of the Senate Comm. on Commerce, 92d Cong., 1st Sess., 2 (1971) (remarks of Sen. Pastore)).*

The FEC ADMITS that national parties established entities that made independent expenditures that were not subject to the FCC regulations pertinent to other party expenditures. To the extent the remainder of paragraph describes regulations or restates the opinions of expert witnesses in this case, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the regulations and reports speak for themselves.

33. *"In our candidate-centered culture, it is desirable to keep candidates close to the parties on whose tickets they run. Parties have concerns other than merely electing a president or a senator; there is some thought to the future, to long-term responsibility to protect the party's reputation. Ultimately, the way to get more accountability and responsibility in political finance would seem to be through democratically-reformed and strengthened political parties, not by enhancing candidate independence." Alexander Rpt. at 24. "The party is here to stay. . . . The party can't afford to get in a situation that is corrupt or corrupting because the party has to be held accountable, and the party is held accountable through the ballot." Alexander Dep. at 111-12.*



The FEC ADMITS that this is the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

34. *As previously noted, the FEC experts agree that "coordinated spending would immediately solve the problems" such as those identified above and state that "freeing [coordinated expenditures] from limits will make it the choice of all." Sorauf/Krasno Rpt. at 45-46.*

The introductory and intermediate clauses are conclusions of an unknown person, which does not warrant a response. The FEC ADMITS that this paragraph contains the opinion of Profs. Sorauf and Krasno. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

35. *In discussing past experiences with independent expenditures from non-party entities, FEC Witness Timothy Wirth called independent expenditures "devilishly horrible things" that are increasingly "well coordinated." Wirth Dep. at 80, 78. He particularly loathed non-party independent expenditures because they are almost always negative and decries them as "another part of what's tearing down the American political system." Id. at 80.*

DENY that this is an accurate characterization of Sen. Wirth's statement, which speaks for itself. FEC ADMITS that some non-party entities make some

independent expenditures that Senator Wirth does not like.

36. *John Heubusch, former Executive Director of the National Republican Senatorial Committee, testified that independent expenditures had in some instances actually been counterproductive and that in the future he "would advise . . . that the chairman not . . . engage in independent expenditure activities." Heubusch Dep. at 102, 106.*

ADMIT that this is an accurate characterization of Heubusch's statement.

37. *Similarly, the Colorado Party does not plan on making independent expenditures because parties "need to spend [their] money efficiently and . . . independent expenditures[,] which are totally separate and apart from the campaign and the candidate and the candidate's message . . . [,] is not an efficient way to spend money. It is much more efficient if [parties] can work with the candidate to be part of . . . a unified campaign and a unified message. Furthermore, it also raises the issue of both the . . . factual and legal issues of what is independent and what is not independent. Parties need clarity, speed, and . . . don't need hassles with the other party . . . or with the regulators." Bain Dep. at 47.*

The FEC ADMITS that this paragraph is the opinion of Donald Bain about possible future events.

38. *"Independent expenditures raise questions about accountability; independent expenditures can shape campaign discourse and popular opinion but, unlike candidates and parties, individuals and groups engaging in independent expenditures do not appear on the ballot and, as a result, cannot be electorally rewarded or punished for their conduct. Thus, despite their disclosure, independent expenditures lack accountability and they are an inefficient way to campaign." Alexander Rpt. at 24-25.*



The FEC ADMITS that this paragraph is based on the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

39. *With independent expenditure campaigns "[c]andidates have no control over the political message that is distributed and that may be attributed to them [and] [c]andidates are also not accountable for political messages or promises attributed to them." Scully, at ¶ 360. Moreover, "[s]ome voters are likely to attribute to candidates messages that are being distributed by independent expenditure campaigns, resulting in voter confusion." Id. at ¶ 361.*

The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n.1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made.

Furthermore, the Colorado Party has not submitted the evidence from the *Scully* case to this Court. We also note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non-federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal candidates, federal political committees, or the Colorado Party.

40. *The FEC's experts concur that "as an avenue for party assistance to candidates, coordinated spending is far more valuable than the other two party options: contributions or independent expenditures." Sorauf/ Krasno Rpt. at 44-45; accord Cino Dep. at 110; Coelho Dep. at 107-110; Hesse Dep. at 59, 88; Heubusch Dep. at 103.*

The FEC ADMITS that this paragraph is based on the opinion of experts in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports and testimony speak for themselves.

**Coordinated Party Expenditures Are Made To Communicate**

41. *"Party coordinated funding is used almost exclusively to help candidates communicate more effectively with the public. Parties and candidates both know that voter communication is the key to winning elections. Candidates must develop a message that is meaningful to voters and have the resources needed to present that message to the electorate. To have their voices heard in modern election campaigns, candidates rely on television or radio advertising, or direct mail, the latter being the preferred medium for many congressional candidates, since broadcast vehicles like television or radio usually have audiences that span more than one congressional district." Corrado Rpt. at 28. "[A]ll of these methods of communicating are expensive." Id.*



The FEC ADMITS that the listed methods of communicating occur. The remainder of his paragraph is based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

42. *"Over 90 percent of the monies spent by national party committees on behalf of their candidates is spent on political communication. And most of the other 10 percent is spent on issues research and polling, which is used to help candidates develop and target their campaign messages." Id. at 30.*

The FEC ADMITS these fact as qualified by Prof. Corrado in his report.

43. *Parties also provide "the funding needed to broadcast their messages or post letters to selected voters," and "support their candidates' speech" through "state of the art television and radio production*

*facilities on their premises, which are used to give candidates technical and editorial assistance." Id. at 29. Parties "produce 'generic' ads each election cycle that include general party messages and themes, which can be customized for particular candidates by incorporating a candidate's name, picture, and voice." Id. "In doing so, a party fulfills one of its principle objectives, since the main way a party's ideology and policy perspectives become known to the electorate, and thus the primary way it generates public support, is through the speech of its candidates. Parties therefore have a keen interest in promoting the widespread airing of their candidates' views." Id.*

The FEC ADMITS the first and second sentences. The FEC ADMITS that the third and fourth sentences are based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

**Parties and PACs Comparison**

44. *"Political parties have some surface similarities with PACs and other groups: they all act in the political arena, they all seek to elect candidates of their choice, they all spend money, they all want some policy outcome. But parties have one vital difference from interest groups: while the various interest groups (and their PACs) usually have one specific goal or concern, political parties represent an amalgam or coalition of interests and goals; moreover, the purpose of parties is to gain control of government, rather than to pursue*



*single goals, as PACs do." Alexander Rpt. at 17. Candidates run as the nominees of their party. § 431(16).*

The FEC ADMITS that the first and second sentences are based on the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself. The FEC ADMITS the third sentence. To the extent that this paragraph is a statement of law, no response is required.

45. *"Political parties seek to win elections by bringing together coalitions of [various individuals and interest] groups and by articulating issues that will resonate with voters. Political scientists generally value this activity as important consensus building in a diverse democracy." Alexander Rpt. at 17. FEC expert witness Sorauf notes that while "[o]ther nonparty organizations may raise funds, organize endorsements, and recruit workers for some candidate's campaign[,] parties are occupied with contesting elections in a way and to a degree that the other political organizations are not. Indeed, their names and symbols are the ones the states recognize for inclusion on most ballots." Party Politics in America at 16.*

The FEC ADMITS that this paragraph is based on the opinion of experts in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY.

46. *Another difference between parties and "special interest groups or PACs [is that] parties must appeal to majorities in the electorate if they are to win; and*

*unlike single issue organizations, they must win races if they are to govern. Parties thus give coherence to American politics. Parties have been a unifying force in this system, building coalitions and making mass democracy possible." Alexander Rpt. at 18. As Professor Sorauf explains, parties have the "ability to make hard political choices, to pursue a collective electoral strategy that will maximize—or will work toward maximizing—the number of victories for a given expenditure of money." Frank Sorauf, Money in American Elections 142-43 (1988); see Corrado Rpt. at 21-22.*

The FEC ADMITS that this paragraph is based on the opinion of experts in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY.

47. *Achieving control of the government requires cooperation among party supporters across the boundaries of states or electoral districts. Through parties, citizens and candidates associate with one another and speak out in support of their political interests. To do this parties must "communicate as widely as possible, and [they] do[] this in part on [their] own and in part through [their] candidates. In lieu of unlimited party support, PACs representing special interests compete for the candidates' attention. It enhances democracy to encourage the broader interests parties represent, than the narrower interests of PACs." Alexander Rpt. at 18.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Alexander. As opinion, THE FEC IS



NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

48. *"Party support leads to increased accountability, and hence is highly desirable." Id. "If the voters don't like what the candidate does, if the voters don't like what the party does, they can vote against the candidate, they can vote against the party. They can't vote against the PAC. They can't vote against the AFL-CIO or the Christian Coalition because they are not on the ballot." Alexander Dep. at 115.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report and testimony speak for themselves. The FEC ADMITS that the AFL-CIO and the Christian Coalition are terms that do not appear on the ballot, but do not have sufficient evidence to admit or deny that voters do or do not make electoral decisions based on whether a candidate is the "AFL-CIO candidate" or the "Christian Coalition candidate."

**Public Perception And Reality**

49. *According to the FEC's proffered expert witness on public opinion, Clyde Wilcox, no evidence exists indicating that the public is aware of, much less concerned about, coordinated expenditures. Wilcox Rpt. at 1-2. He says that present public attitudes reflect profound ignorance of how federal election laws work. Id.*

*at 2. He notes that most Americans are not even aware that FECA limits the abilities of corporations or private citizens to donate their own funds directly to candidates. Id. FEC witness Wirth agrees: "I don't think anybody has any idea that [a coordinated limit] exists." Wirth Dep. at 69. Maria Cino similarly testifies that "99 percent of the American public" lacked any idea about limits on party spending in support of their candidates. Cino Dep. at 123-24; accord Williams Decl. at ¶ 11.*

The FEC ADMITS that this paragraph is based on the opinion of experts in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports and testimony speak for themselves.

50. *Professor Sorauf concurs that public opinion concerning campaign finance issues lacks touch with "reality," 94 Colum L. Rev. at 1359, and asserts that, in the public perception, "[m]oney . . . has come to explain too much too easily in the new epistemology." Inside Campaign Finance, at 24.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Sorauf. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the law review article speak for itself.

51. *Professor Sorauf attributes the public's misunderstandings in large part to the mass media, noting that "its mythmaking has been especially important." 94 Colum. L. Rev. at 1356. He points out that, in addition to the "worldviews of Populism and Pro-*



*gressivism" characteristic of reporters, the problem flows from "the very nature of the journalistic enterprise: the need for simplicity, for personalization, for conflict, for change and novelty, and for bad or shocking news." Id. at 1356 n. 33. He also notes that stories about campaign finance tend to serve to fill up "a slow news day," observing that "an inordinate proportion of stories on campaign finance appear on Sunday television or in Monday morning newspapers." Inside Campaign Finance, at 162.*

The FEC ADMITS that this is this paragraph is based on the opinion of Prof. Sorauf. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the law review article and book speak for themselves.

52. *Professor Wilcox reported a generalized concern over "foreigners contributing money," of special access for "large donors," and regarding "large donations" to parties. Wilcox Rpt. at 2-5. Foreigners cannot contribute hard money, which is the only type that may be used for coordinated expenditures. § 441e. And as previously noted, the size of hard money contributions is limited by FECA. § 441a.*

The FEC ADMITS that the first sentence is based on the opinion of Prof. Wilcox. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself. The second and third sentences are statements or conclusions of law to which no response is required.

53. *Professor Wilcox recognizes that, since the public does not know that party coordination with candidates is limited, changing or eliminating the limits on the ability of parties to coordinate their spending with their candidates would not, in itself, affect public perceptions at all . Wilcox Rpt. at 2. He says, however, that a "flood of new party spending" would feed the public's general disenchantment. Id. at 2.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Wilcox. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

**Effects Of Striking Down FECA's Limits On Coordinated Spending**

54. *There is no evidence that eliminating FECA's restrictions on coordinated spending by political parties would produce a "flood of new party spending," Id. at 2 (a term not defined by the FEC experts), or even that total party spending would increase. Parties already are raising and spending as much money as they can. See Corrado Dep. at 265-67. To the extent that there is any evidence as to the likely effects of removing barriers to coordination between parties and their candidates, the likely consequences are two: (a) present independent expenditures by parties will tend to be reallocated to coordinated expenditures, and (b) because the relative value of hard money versus soft money will be increased, parties will tend to give greater emphasis to raising hard money rather than soft money. Alexander Dep. at 215; Corrado Dep. at 128-29. Neither of these consequences implies any*



*additional party spending. Moreover, FECA's limits on hard money contributions inhibit "large" donations. See Alexander Dep. at 215.*

The FEC ADMITS that this paragraph is based on the opinion of experts in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports speak for themselves.

**Coordinated Expenditures Are Not Corrupting**

55. *The coordinated expenditure "limits were enacted with a view to reducing overall spending, not because coordinated expenditures were in any way considered to be corrupting." Alexander Rpt. at 14-15. "In the decades since 1974, when coordinated expenditures were allowed for both presidential and congressional campaigns, there has not been any dispute relating to them, no charges of corruption or the appearance thereof, so clearly coordinated expenditures could be increased substantially or unlimited without fear of corruption." Alexander Rpt. at 14.*

The first sentence is the opinion of an expert on a conclusion of law for which no response is necessary. The FEC ADMITS that second sentence is based on the opinion of Prof. Alexander. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

56. *FEC witnesses Sorauf and Krasno acknowledge that "many scholars and observers . . . argue that*

*money in passing through a party is somehow purified of the interests and demands of the original source and is, therefore, benign in its effect on the candidate who receives it or benefits from it." Sorauf/Krasno Rpt. at 10-11.*

The FEC ADMITS that this paragraph is based on the opinion of Profs. Sorauf and Krasno. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

57. *"There is no academic analysis or scholarly study conducted to date that demonstrates that parties are corrupted by the federally regulated contributions, the so-called 'hard money funds' they receive from donors. None of the studies of party finance or party coordinated spending contend that these funds are corruptive or generate the appearance of corruption in the political process." Corrado Rpt. at 43. Professor Corrado's research indicates that "parties do not allocate these funds on the basis of a candidate's position on any particular issue," but rather on elections where their funds are most likely to make a difference on the outcome. Id.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Corrado as qualified in his deposition and report; *i.e.* scholarly research cannot rule out that this occurs, see FEC fact 308. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.



58. *No witness or expert for any party has identified any instance in this century in which a member of Congress took official action as a quid pro quo for any contribution to a political party, let alone for a hard money contribution made pursuant to the limitations and disclosure requirements of FECA. To the contrary, every witness that opined on this matter testified that corruption did not occur with parties and their congressional candidates. Barbour Dep. at 115-21; Coelho Dep. at 109-10, 118-20; Hesse Dep. at 87-88; Heubusch Dep. at 103; Wirth Dep. at 38, 42-43; see also Wirth Dep. at 43 (responding to a question asking whether the Republican Party in Colorado was corrupt, the Democratic candidate targeted by the ads originally at issue in this case stated, "no"); Decl. of P. Williams at ¶ 8 (Pat Williams, FEC witness and former nine-term Congressman, testified that "no party committee ever asked me for anything in return for their support.").*

DENY. See FEC facts 94, 179, 205,250, 251, 262, 263.

59. *Professor Sorauf, the FEC's expert witness, notes that "[f]or all the betrayal of public trust set out in the Watergate papers, there were no instances of quid pro quos for campaign contributions." Frank Sorauf, "Politics, Experience, and the First Amendment," 94 Colum. L. Rev. 1348, 1351 n. 17 (1994). Professor Sorauf's writings also conclude that "the demands of the contributor [to a party organization] are largely indirect; certainly, very few contributors seek a direct quid pro quo " Party Politics in America at 339.*

DENY that this is an accurate characterization of Professor Sorauf's opinion as stated in the cited writings;

e.g. Professor Sorauf said that the *Buckley* court did not cite an actual *quid pro quo* but held that the problem was not an illusory one.

60. *The FEC's expert witnesses admit that American parties do not allocate campaign support in return for the agreement of candidates to change their policy positions . Sorauf/Krasno Rpt. at 15-16. Instead, their objective is "to win or maintain control of the [legislative] chamber and the powers of the majority party." Sorauf/Krasno Rpt. at 16, accord Corrado Rpt. at 43; Corrado Dep. at 227-28. Thus, parties allocate their support "for electoral reasons – a chance to win a seat, the danger of losing a seat," rather than to coerce particular policy positions. Sorauf/Krasno Rpt. at 18, accord Corrado Rpt. at 43. Tony Coelho, the former Congressman and Chairman of the Democratic Congressional Campaign Committee stated, "I would never ask somebody to do something that would defeat them. I would never ask somebody to do something that goes against their basic principles." Coelho Dep. at 111-12*

DENY that this is an accurate characterization of Professors Sorauf's and Krasno's opinion which at p. 18 - 19 states that party campaign funds may be used for corrupt purposes. ADMIT that Coehlo stated this in the abstract, but see FEC fact 224 to the contrary in a specific situation.

61. *"Party leaders and public officials are more likely to engage in joint decisions on what level of support is desirable for a given candidacy. Their common ideology and need to win elections should inform party decision making, not pressure on the basis of contributions or assistance given. For the most part, party leaders and public officials are engaged in a joint enterprise seeking common goals." Alexander Rpt. at 22; see also Coelho Dep. at 46 ("You had to have a majority in order to" "elect a Speaker," "decide what Social Security should or should not be," or "decide whether or not there is the American Disabilities Act.").*



The FEC ADMITS that this paragraph is based on the opinion of experts and other witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports and testimony speak for themselves.

62. *Similarly, every witness who had experience with a political party testified that parties could not and did not use campaign assistance to attempt to control the policy positions of officeholders. Cino Dep. at 118-21; Coelho Dep. at 94-95; Heubusch Dep. at 98-99; Simon Dep. at 20-22; Wirth Dep. at 83; see Bain Dep. at 68-69. To the contrary, incumbents have access to a wide range of funding sources, generally do not receive much, if any, of the party money, and are accordingly not dependent on party funds. See Corrado Dep. at 248.*

DENY. *See* FEC facts 211, 212, 213, 217, 224, 233, 234, 238, 239.

63. *Political scientists have attempted to go beyond anecdote and rumor to assess the influence of money on policy outcomes. "Studies of congressional voting behavior offer no evidence that votes of members of*

*Congress or Senators are influenced by party coordinated expenditures or other party contributions. Scholarly research indicates that the factors that generally determine voting behavior are a member's ideological predispositions and the interests of a candidate's political constituency, the voters he or she represents, not the influences of any particular campaign contribution." Corrado Rpt. at 45.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Corrado as qualified. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; but see FEC fact 308.

64. *This is not to say that parties abdicate control of coordinated expenditures and the resulting speech. The FEC's expert witnesses opine that parties "routinely put conditions, often severe and controlling ones" on their "coordinated spending in support of candidates." Sorauf/Krasno Rpt. at 25. However, these conditions relate to achieving the parties' broad goal of assuring election of their candidate, not any attempt to require official action by candidates. See Sorauf/Krasno Rpt. at 25; see also Hickmott Decl. at ¶ 31 ("I am not aware of any instance in which a Senator who had to cast a particularly difficult vote was promised DSCC money in return for that vote."). Furthermore, parties are made up of diverse interests and personalities. As Professor Sorauf notes, "[t]he major American parties are loose coalitions of individuals and groups with quite different interests" where "battles" for control of party resources are common. Money in American Elections at 137.*



DENY that this is an accurate characterization of the opinions of Professors Sorauf and Krasno. See response to fact 62, Sorauf/Krasno Report at 26, Billings Statement at 22-23.

**Opportunities For Access And Persuasion**

65. *The writings of FEC expert witness Sorauf acknowledge that, in Buckley and subsequent election finance cases, the Supreme Court has "chosen a narrow, literal meaning for corruption," in which the Court repeatedly uses "the phrase 'quid pro quo'" and "clearly was preoccupied with illegal or unethical behavior." 94 Colum. L. Rev. at 1350.*

The FEC ADMITS this is this paragraph is based on the opinion of Prof. Sorauf of a legal conclusion, and therefore, the FEC IS NOT REQUIRED TO ADMIT OR DENY.

66. *The FEC's expert witnesses make no claim that quid pro quo corruption is a focus of concern for purposes of this case. They assert instead that the concept of "corruption" must be "expanded" to include the risk that contributors of "large sums of money" may obtain "access" to candidates and elected officials that gives them "extra opportunities to persuade." Sorauf/Krasno Rpt. at 3-8. Thus, when the FEC's witnesses speak of "corruption," they are using that term in this much watered down sense, never adopted by the Supreme Court, to refer to obtaining such opportunities for access and to persuade. Corrado Dep. at 8.*

The first sentence is a characterization of an unknown person for which no response is required. The FEC ADMITS that the remainder of this paragraph is based on the opinion of experts in this case. In addition the last sentence is the opinion of an expert of a legal conclusion. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports and testimony speak for themselves.

67. *The FEC's experts do not define "large sums" for purposes of their discussion of obtaining opportunities to persuade, nor do they generally distinguish between hard and soft money contributions. The publicly reported controversies to which the FEC experts refer in passing typically involve soft money contributions in the range of hundreds of thousands or even millions of dollars—a range far beyond hard money limits. See, e.g., Sorauf/Krasno Rpt. at 7 n.7 (noting individual that "has given more than $1 million"); id. at 19 (commenting on two occasions where over "$2.5 million from [two different national committees'] non-federal account(s)" were transferred to state candidates); id. at 28 (noting the media's focus in 1996 "on the willingness of interested donors to commit large sums—six-figure sums of soft dollars in some instances").*

This paragraph is a characterization by an unknown person of the opinion of experts and as such no response is necessary.



68. *The FEC's experts concede that "most academic experts" reject claims that access often is "converted into actual policy outcomes," but express their admittedly minority view that additional access may lead to "'some' success, especially on policies concerning narrowly held interests on less visible policy questions" such as a "very specific clause in the tax code applying to very few businesses." Id. at 6-7. They do not explain the mechanism by which access produced the supposed result except to speak of additional "opportunities to persuade." Id. at 6.*

This paragraph is a mischaracterization by an unknown person of the opinion of experts and as such no response is necessary. *See also* FEC facts 161 - 171, 178 - 205, which are contrary.

69. *Access to political party candidates and officeholders may be obtained in various ways, ranging from simply calling to ask for an appointment to serving as a volunteer in political campaigns to attending meetings and rallies. The FEC offers no evidence that persons who are unwilling or unable to make large contributions cannot obtain access in myriad other ways. Rather, the reality is that "many [individuals,] groups and organizations who don't give contributions" still have access to members of Congress and their staffs. Corrado Dep. at 238-39. Professor Corrado, for example, notes that because of his background and area of expertise he has frequent "access." Id. 242-43.*

The FEC ADMITS the first, third and fourth sentences. The second sentence is a characterization by an

unknown person of the evidence in this case and as such no response is necessary.

70. *Donors generally do not give money to attain access to political leaders. "[S]tudies done of donor motivations . . . have found that there's a wide range of reasons why people give. People give because they support the parties. They define themselves as party supporters, and this is one way they politically participate in the process. A substantial share also give because they share the ideological preferences that the parties represent. Others give money because of the fact that they . . . want to be a part of something."* Id. *at 11-12.*

The FEC ADMITS the facts in this paragraph, but notes that it explicitly does not attempt to describe all donors, for examples of other donors see FEC facts 161-210.

71. *Professor Corrado also states that "[a] share of donors . . . give contributions for the purposes of gaining some access. But that doesn't necessarily mean they are seeking specific legislative favors or policy influences." Id. at 12. Instead, many of those seeking access simply "want to meet members of Congress and Senate. . . . [T]hey attach some celebrity status to Members of Congress and members of the Senate. . . . [Finally, m]any of them give for ideological purposes." Id. at 12, 14.*

The FEC ADMITS the facts in this paragraph, but notes that it explicitly does not attempt to describe all donors. For examples of other donors, see FEC facts 161 - 210.



72. *There is no evidence that parties arrange "opportunities to persuade" as quid pro quos for party donors nor has any witness or expert testified that this occurs. Typically, persons who contact parties asking for assistance in arranging a meeting with a legislator are told which staff member to deal with, but the party would not inform the staffer or the legislator of the donor's contributions. See Barbour Dep. at 53-55; Coelho Dep. at 54-57; Wirth Decl. at ¶ 15; Billings Decl. at ¶ 14.*

DENIED. See FEC facts 242, 243, 245-252, 254-281, 303.

73. *The FEC's experts stress that parties arrange for large donors to attend various dinners, receptions, outings, or retreats, also attended by party candidates and officeholders. Sorauf/Krasno Rpt. at 12. They assert that the candidates and officeholders become aware that persons they meet at such events have contributed substantial sums to the party. Id. at 12-13. Even the FEC's experts do not claim that the types of group social events arranged by parties in themselves are useful as "opportunities to persuade."*

The FEC ADMITS the first and second sentences. The second sentence is a characterization by an unknown person of opinion of experts in this case and as such no response is necessary.

**Funding Challengers**

74. *The FEC's expert witnesses recognize that, but for the constraints imposed by FECA, parties would shift substantial amounts from contributions or indepen-*

*dent expenditures to coordinated expenditures on behalf of the party and its candidate. Id. at 44-45. In particular, parties would do so in close contests on behalf of traditionally under-funded non-incumbents where effective communication and "party assistance might make a difference in whether the party candidate wins or loses the election." Corrado Rpt. at 21-22. Parties play a uniquely important role in assisting "challengers who can wage competitive campaigns against an entrenched incumbent of the opposite party." Id. at 22.*

The FEC ADMITS that this paragraph is based on the opinion of experts in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the reports and testimony speak for themselves.

75. *"In both parties in 1996, the majority of party coordinated expenditures were made on behalf of non-incumbents . The Democrats devoted 85 percent of their total coordinated expenditures in Senate races to challengers (31 percent) and open seat candidates (54 percent). In House races, 80 percent was spent on behalf of non-incumbents, with challengers (56 percent) receiving more than twice the share that went to open seat candidates (24 percent)." Id. at 23-24.*

ADMIT.

76. *"The Republicans' coordinated activity also favored non-incumbents. The Republican committees, however, spent more than the Democrats defending incumbents because of the unusually large number of incumbents involved in close races, especially among*



*the freshman class in the House, most of whom won in 1994 with 55 percent of the vote or less. Even with this unusually large number of threatened incumbents, the Senate and House committees each disbursed close to two-thirds of their coordinated funds on races involving non-incumbents." Id. at 24.*

ADMIT.

77. *The witnesses agree, without exception, that the most important factor in determining the extent of party funding of races is the marginality or competitiveness of the race. E.g., Bain Dep. at 31-32; Barbour Dep. at 100, 115; Cino Dep. at 101, 103; Wirth Dep. at 60. Thus, "[i]n [California's] 'close' [state legislative] elections, those where the challenger won at least 40% of the vote, the average contribution in 1988 from party sources was $213,852 to challengers, but only $54,460 to incumbents. Challengers received 30.5% of their funds from party sources, while incumbents received 11.6%." Scully, at ¶ 276.*

The first sentence is a characterization by an unknown person of the evidence in this case and as such no response is necessary. The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n. 1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made. Furthermore, the Colorado Party has not

submitted the evidence from the *Scully* case to this Court. We also note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non- federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal candidates, federal political committees, or the Colorado Party.

78. *"Party coordinated expenditures are especially important because parties are the only source of funding that mostly benefits non-incumbents. As political scientists have noted for years, one of the major problems in the campaign finance system is the inability of challengers to raise the monies needed to wage viable campaigns." Corrado Rpt. at 25. Challengers "often find it difficult to raise the funds needed to make their views known to the electorate." Id. at 29. "Challengers therefore look to party committees for assistance in overcoming the significant financial disadvantages they experience in most elections. Party money is the only major source of funds in the political system that challengers can rely on to help counter the overwhelming resource advantage incumbents enjoy as a result of their greater success in fundraising [and] the privileges that accompany their position in government, such as the franking privilege." Id. at 26.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Corrado. As opinion, THE FEC IS NOT



REQUIRED TO ADMIT OR DENY; the report speaks for itself.

79. *By contrast, "[p]arty resources are not a major source of funding for incumbents." Id. at 22. As a general rule, incumbents have an established campaign organization, campaign experience, name recognition, and credibility in raising funds directly, advantages that most challengers lack. Id. at 26. Access to PAC money alone strongly favors incumbents. "[I]n 1996 PACs gave an average of over $950,000 to Senate incumbents, more than three times the average amount they gave Senate challengers." Id. Similarly, in 1996 "PACs gave an average of close to $300,000 to House incumbents, which was more than five times the amount given to challengers and approximately five times more than the amount that national and state parties combined were legally allowed to spend ($61,820) on behalf of such challengers." Id. at 26-27. "In many instances, parties would be willing to spend more to assist their candidates, but are prevented from doing so because of [the] federal ceilings [at issue in this case]." Id. at 27. Accordingly, "[i]n addition to spending disproportionately on marginal, competitive races, the parties time their spending to assure its strategic value." Money in American Elections 141.*

The FEC ADMITS the first five sentences in this paragraph, but notes that these are explicitly generalized facts that may not be accurate for all candidates. The last two sentences are opinions, which the FEC IS NOT REQUIRED TO ADMIT OR DENY.

80. *One of FEC expert Sorauf's books documents the lack of funding for challengers: "What was a 1.5 to 1 advantage over their challengers in receipts in 1978 became a 3.7 to 1 spread by 1990." Frank Sorauf, Inside Campaign Finance 16 (1992). "In 1980 the average House major-party challenger running against an incumbent in the general election spent $100,458 in the entire campaign; by 1990 that figure was only $109,377, and only $54,503 in 1980 dollars. The average incumbent spent $165,599 in 1980 and $399,310 in 1990 ($199,197 in 1980 dollars)." Id. at 174. In addition to this funding advantage, incumbents' "advantages of office," including the "postal frank, their easy access to the media, their district offices, and their staffs for 'servicing' constituents, all have grown in recent decades." Id. at 176. Parties can potentially present a partial counterbalance for the challenger. See Billings Decl. at ¶ 18. Professor Sorauf notes that, in contrast to other election funding sources, parties tend to direct their support to nonincumbents. Money in American Elections 141. Accordingly, "to the extent [that] you limit the role of the party, you basically are protecting the good old boy network, as opposed to reaching out [to challengers]." Coelho Dep. at 117.*

The FEC ADMITS the amounts described, but the remainder of sentences one through four and sentence six are based on the opinion of Prof. Sorauf. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself. [book] To the extent this paragraph restates facts supported by Prof. Sorauf's book, the FEC ADMITS. The FEC DENIES that



sentence five accurately characterizes Billings statement. The FEC ADMITS that sentences six and seven are based on the opinions of witnesses in this case. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the testimony and declarations speak for themselves.

**There Is No Evidence Justifying the Present Low Limits**

81. *In addition to contending that FECA forbids any limitation on a party's coordinated spending of hard money in support of its candidates, the Party alternatively contends that the limits imposed by FECA are unconstitutionally low. The FEC has offered no evidence justifying the present FECA limits or showing that much higher limits would not fully serve any legitimate governmental purpose. Instead, the FEC witnesses have offered only the speculative consequences of allowing completely unlimited coordinated spending by parties.*

This paragraph is legal description of the Colorado Party's position in this matter and the characterizations of the evidence by an unknown person, none of which require a response.

82. *"[T]he current 441a(d) limits are very severe restrictions on the party's ability to work with their candidates." Corrado Dep. at 275. These limits "were not designed to ensure effective or meaningful political communication. They were set at levels—2 cents times the voting-age population with adjustments for infla-*

*tion—that virtually guaranteed that any communication with party members on behalf of candidates would be severely limited. At this level of funding, party committees could not afford to pay the postage on one letter to each eligible voter in a district or state, never mind the cost of the stationary and printing needed to produce the letter. In fact, the limits were so low that a party committee could not even send a letter to each party supporter in a state or district; that is, it could not pay to send a letter to its own members. In contrast, congressional incumbents in 1974 were spending $30.5 million posting franked mail to constituents at an average cost of about 10 cents per piece of mail. By 1988, congressional incumbents were spending about $82.2 million on franked mail, at an average mailing expense of about 14 cents. The coordinated spending allowed party organizations, however, had increased only to about 5 cents for each person of voting age." Corrado Rpt. at 17*

The FEC ADMITS the amounts cited, but the remainder of this paragraph is based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

83. *"The coordinated spending limits are particularly restrictive because they are adjusted only for inflation and voting age population. Neither of these measures adequately represents the real changes in the costs of campaigns. The costs of campaign services and communications, such as polling, television advertising, direct mail services, and travel expenses, have increased at a rate significantly greater than the Consumer Price Index, which is used to adjust party*



*spending limits." Id. at 17-18 (explaining that while the Consumer Price Index rose "about 40 percent," "the cost of such basic items as mass mailings, television commercials, and air travel grew by 50, 100, and 300 percent"); see also Scully, at ¶ 129 ("Since 1976, the cost of campaigns has risen and the value of the dollar has decreased.").*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself. To the extent this paragraph restates facts supported by Prof. Corrado's statement, the FEC ADMITS. The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n. 1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made. Furthermore, the Colorado Party has not submitted the evidence from the *Scully* case to this Court. We also note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non-federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal can-

didates, federal political committees, or the Colorado Party.

84. *"There is a minimum funding threshold in competitive races that a challenger who does not otherwise have name recognition must reach in order to compete in a campaign."* Scully, *at ¶ 124. "[W]e have already reached a point where . . . the parties . . . just cannot provide much assistance, particularly to these challengers who often need much more help in terms of getting over that hump of waging a viable campaign." Corrado Dep. at 278 (noting that while campaign spending in a hotly contested congressional race ranges between $500,000 to $950,000, the party may find itself limited to spending only about $30,000 in coordinated expenditures).*

The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n. 1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made. Furthermore, the Colorado Party has not submitted the evidence from the *Scully* case to this Court. We also note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non-federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence



introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal candidates, federal political committees, or the Colorado Party. The FEC ADMITS the amounts in sentences two and three, but the remainder of those sentences are based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report and testimony speak for themselves.

85. *These restrictions on coordinated spending "make it impossible for [political] committees to pay for a very extensive or intensive amount of campaign speech." Corrado Rpt. at 33.*

The FEC ADMITS that this paragraph is based on the opinion of Prof. Corrado. As opinion, the FEC IS NOT REQUIRED TO ADMIT OR DENY; the report speaks for itself.

86. *For example, "even if a party takes advantage of bulk mail and reduced postal rates, and spends the maximum amount allowed the national and state and local committees in a given congressional district, the party can at best pay the postage for one mailing to a targeted group of voters within a district. It is not allowed to pay the production expenses and mailing of just one letter to the voters within a district."* Id.

The FEC ADMITS that this paragraph as explained and qualified by Professor Corrado.

87. *"Political mailings such as material from a candidate compete not only with one another for the recipients' attention but also with the approximately 22 pieces of commercial mailings or "junk mail" that households in California receive each week. In these circumstances, repetition is essential if the candidate's message is going to be received and heard through what amounts to the noise of other mail. Without repetition, it is as if the communication did not happen. It takes five mailings to establish a meaningful mail campaign."* Scully, *at ¶¶ 83-84.*

The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n. 1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made. Furthermore, the Colorado Party has not submitted the evidence from the *Scully* case to this Court. We also note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non-federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal candidates, federal political committees, or the Colorado Party.



88. *Political parties are similarly unable to coordinate with candidates to "finance a significant amount of media broadcast time. Generally the § 441a(d) limits prevent the parties from purchasing the broadcast time needed to air more than one or two ads effectively on a statewide basis. For example, in 1996, the national party organizations were permitted to spend $168,707 in South Carolina under the § 441a(d) ceiling. The estimated cost to air one thirty-second campaign ad in South Carolina on a statewide basis with enough frequency that it would penetrate the viewing audience and have its message understood by voters was approximately $186,000." Corrado Rpt. at 33. The comparable figures in Colorado would be costs of "$123,750 against a limit of $170,932."* Id. *One or even two thirty-second campaign ads are inadequate however as, for example, "[i]t requires a thousand rating points, which mean approximately ten repetitions, on television to communicate a message in a statewide campaign in California."* Scully, *at ¶ 102.*

The FEC ADMITS the facts cited by Professor Corrado. The Commission objects to proffered facts from *California Prolife Council Political Action Comm. v. Scully*, No. Civ. S-96-1965, 1997 WL 7173, at *15 n. 1 (E.D. Cal. Jan. 6, 1998). The Commission was not a party to that suit, and thus has not been given an opportunity to review, challenge or respond to the evidentiary bases on which the findings were made. Furthermore, the Colorado Party has not submitted the evidence from the *Scully* case to this Court. We also

note that *Scully* involved a challenge to a California state law which imposed restrictions on the amount non-federal candidates may raise and spend in their non-federal campaigns. Accordingly, the evidence introduced in *Scully*, and the corresponding findings of fact, do not relate to federal campaigns, federal candidates, federal political committees, or the Colorado Party.



Respectfully submitted,

/s/ LAWRENCE M. NOBLE (SEH)
LAWRENCE M. NOBLE
General Counsel

/s/ RICHARD BADER (SEH)
RICHARD B. BADER
Associate General Counsel

/s/ STEPHEN E. HERSHKOWITZ
STEPHEN E. HERSHKOWITZ
Assistant General Counsel

/s/ SUSAN E. PROPPER
SUSAN E. PROPPER
Assistant General Counsel

/s/ COLLEEN T. SEALANDER
COLLEEN T. SEALANDER
Attorney

February 13, 1998

FOR THE COUNTER-DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202) 219-3690

Excerpts from exhibits in support of Federal Election Commission's motion for summary judgment



## THE CONGRESSIONAL FORUM AND HOUSE COUNCIL

### PROGRAMS OF THE NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

The Congressional Forum and House Council programs of the National Republican Congressional Committee have been developed to open the channels of communication between the business community, PACs, and Republican House Members. The programs involve its participants in the policy-making process through an unprecedented level of dialogue with House Republicans and party leaders.

These programs offer an unprecedented number of quality events which allow you to develop important relationships not only with Republican Members of Congress, but also with others in the business community. Regular meetings permit Congressional Forum and House Council members to voice their opinions and exchange information regarding the issues directly affecting their industry.

#### THE CONGRESSIONAL FORUM

*$15,000 Annually for Individuals and PACs*
*$20,000 Annually for Corporations*

The Congressional forum is the NRCC's major donor program for the business community. This program has been designed to give its members an intimate setting to develop stronger working relationships with the new Republican Congressional majority. Members of the Congressional Forum

receive all the benefits of the House Council program in addition to Congressional Forum benefits.

*BENEFITS OF MEMBERSHIP:*

- Monthly private dinners with the Chairmen and Republican Members of key Congressional Committees.
- Private dinner with Speaker Newt Gingrich and the GOP House Leadership.
- Private dinner with House Committee Chairmen.
- An invitation to the Chairman's Skeet and Trap Shoot.
- VIP Preference at House Council and NRCC events.

The most important thing you can do to support Republicans is to support the NRCC. *Membership dues go directly to fund House races.*

## THE HOUSE COUNCIL

*$5,000 Annually for Individuals and PACs*
*$10,000 Annually for Corporations*

The House Council is the NRCC's lower-dollar donor program for the business community. The program strives to open the lines of communication between Republican Members of Congress, key-staff, and the business and PAC community. Through its briefings and events this program provides an unprecedented level of dialogue and information for its members.



*BENEFITS OF MEMBERSHIP:*

- Regular briefings with key Republican Members and staff who work directly on the discussion topic. This year's topics will include *Contract with America* legislation, welfare reform, Superfund, regulatory reform, as well as topical issues as they come before Congress.
- Regular Political Briefings focusing on national trends and activities crucial to maintaining Republican control of the House in 1996.
- Invitations to the NRCC Winter and Summer Meetings, each two-day event features political and legislative discussions with key House Members and keynote addresses by prominent GOP leaders.

FOR FURTHER INFORMATION, PLEASE CONTACT NYDIA BONNIN, CONGRESSIONAL FORUM/ HOUSE COUNCIL DIRECTOR, AT (202) 479-7011.

Paid for by the National Republican Congresssional Committee. Not prepared at government expense.

National Republican Senatorial Committee

**CHAIRMAN'S FOUNDATION NEWS**
**NATIONAL REPUBLICAN SENATORIAL COMMITTEE**

Senator Al D'Amato
Chairman

September 27, 1995

**FOUNDATION MEETING NOTES**

The Chairman's Foundation held its 4th meeting of 1995 on Tuesday, September 12th at NRSC Headquarters on Capitol Hill.

Thirty Foundation members and guests were briefed on the issues before the Senate Finance Committee by the Chief of Staff and General Counsel, the International Trade Counsel and the Tax Counsel. Following the briefings, Foundation members had the opportunity for in-depth, personal discussions on the issues during a reception and working dinner with Senators D'Amato, Bond, Simpson, Chafee, Murkowski, Pressler, Grassley and Nickles, as well as the new Finance Committee Chairman, Senator Roth, and the Finance Committee staffers. We were very pleased to have fully eight of the ten Republican Senators on the Finance Committee in attendance, with Senator Roth in only his second day in the chairmanship.

We would like to answer questions or listen to any ideas you might have regarding the above items or the



Chairman's Foundation in general. Please call Nancy Thawley at 202/675-6102 or Dennis Ryan at 202/675-6005.

RONALD REAGAN REPUBLICAN CENTER
425 SECOND STREET NE • WASHINGTON DC 20002 •
(202) 675-6000

## LEGACY OF LEADERSHIP

■ CITIZEN LEADERS DEDICATED TO AMERICA'S FUTURE: The Presidential Roundtable is a unique forum in U.S. politics which brings together many of the nation's most informed business leaders and prominent citizens who want to help strengthen our economy and protect American liberty. Roundtable members support these goals through their generous financial support for Republican Senatorial campaigns and through their personal contact with individual Republican Senators. Today, with a Republican Majority Congress, there are even greater opportunities for Roundtable members to advise and counsel Republican Senate leaders on legislation to roll back government and restore America's greatness.

■ MEMBERSHIP BY INVITATION: The membership of the Roundtable is limited and by invitation only. Typically, meetings take place in small working groups or panel discussions allowing members more direct discussions with Republican Senators on critical social, political and economic issues.

■ SEIZE THE CHALLENGE: Presidential Roundtable members have a special focus on the policies of the presidency and electing a Republican to the White House in 1996. Important membership benefits include up-to-the-minute strategy sessions with Republican candidates and campaign managers on winning the presidency. Members are highly regarded as serving among the top echelon of leaders who are at work to make certain America will enjoy the full benefits of Republican leadership in the White House.



■ A PERSONAL COMMITMENT: Expanding the 53 seat Republican Senate Majority in 1996 is another important goal of the Presidential Roundtable. Roundtable members will be the senior partners in providing the financial resources and expert campaign assistance Republican Senators and candidates need to defeat their Democrat opponents.

■ ROUNDTABLE POLICY FORUMS: In addition to specially arranged events in different parts of the country, members come to Washington twice a year to attend Roundtable Policy Forums, a members-only, private meeting with Republican Senators and distinguished guests. The sessions are attended by the Republican Chairmen of such key Senate Committees as Finance, Appropriations, Foreign Relations and Judiciary, as well as by other Republican Senators and select leaders from the national and international political and business world. During Republican Administrations, member meetings and receptions with the president, vice president and cabinet officials are not uncommon.

■ REPUBLICAN NATIONAL CONVENTION: As an additional membership benefit, Presidential Roundtable members will have the opportunity to attend the August 1996 GOP Convention in San Diego, California.

■ PERSONAL MEMBERSHIP BENEFIT: Roundtable members are entitled to attend all events of the Republican Senatorial Inner Circle. Additionaliy, members receive a special quarterly campaign and legislative publication, *Roundtable Forum*, as well as the distinctive Presidential Roundtable lapel pin and membership card. An added member benefit is to make new

business and personal friendships through Roundtable events.

■ ROUNDTABLE STAFF: Members are encouraged to contact the Roundtable staff, through a special toll-free number, for information on upcoming Roundtable events, or for any assistance they might need in planning their visits to Washington.

■ FINANCIAL COMMITMENT: Roundtable membership requires a generous annual financial membership of $5,000 in personal or corporate funds to the National Republican Senatorial Committee (NRSC).

■ YOU ARE INVITED: Those with the vision and resources are invited to seize the challenge to make history by winning an across-the-board victory in 1996 as a member of the Presidential Roundtable.

National Republican Senatorial Committee
Ronald Reagan Republican Center
425 Second Street, N.E.
Washington, DC 20002
(202) 675-6095



Congressman Wayne Allard

August 27, 1996

Collis P. Chandler Jr.
2101 Ridge Plaza
Castle Rock, CO 80104

Dear Collis:

Thank you! Because of the early commitment you and others made, I am the Republican Party's nominee to succeed Hank Brown in the United States Senate, and am working now for a solid victory in November.

It will be a tough fight, though, and the Democrats will do everything to take this seat away as part of their quest to take over the Senate and return to "business as usual" as they enjoyed it previously. I am pleased that Colorado GOP Chairman Don Bain has assured me the Party is 100 percent behind our campaign, and that support will be critical.

I would like to invite you to join Joan, Don and me for a breakfast briefing on this and other important general election races. Don and others will give the latest data and strategic insights on the campaigns, from the White House to the Colorado General Assembly. Breakfast will be on Monday, September 9, 1996 at The Brown Palace at 7:30 a.m.

We hope you will be able to attend this briefing session. Your financial support to my campaign has been vital, and you have our deepest gratitude. Under federal election laws, however, you are at the limit of what you can directly contribute to my campaign. At

the breakfast, Don and I will also discuss how you can further help my campaign by assisting the Colorado Republican Party. As I mentioned, the Colorado GOP will play an enormous role for me and other candidates in the general election race. I encourage you to come and join in this important discussion.

Please R.S.V.P. for this briefing breakfast to Mary Kay Bohnenblust at (303) 893-1776 by Friday, September 6. I am looking forward to seeing you there, and Joan and I thank you once again for your help and support.

With warm personal regards,

Wayne Allard

Paid for by the Colorado Republican Party



TO: Rep. Bill Paxon
Maria Cino

FROM: Gary A. Franks

DATE: July 22, 1996

RE: NRCC Support

I am anticipating a very tough re-election. I have been attacked by the unions with negative television commercials, on and off, since the summer of 1995.

The Democractic National Committee (led by Connecticut Senator Chris Dodd) is committed to defeating me.

I am requesting and I need the full financial support of the NRCC.

It should be noted that I have raised the NRCC $25,000 via the House-Senate Dinner this year and I raised $25,000 in 1995 for the RNC.

Your immediate consideration and approval would be appreciated.

Thank you.

/s/ Gary A. Franks

AMERICAN INVESTMENT MANAGEMENT, INC.

P.O. Box 220 - 1110 Bradshaw Drive
Florence, Alabama 35631-0220
VIA FACSIMILE To:

Phone (205) 760-9657
Fax (205) 767-5804

RE: $ Contribution to Alabama State Republican Party on behalf of U.S. Representative Bill Archer and Wayne Parker

DATE: September 24, 1996

PAGES: Cover + 1

As I have discussed with each of you, I have been asked by Herb Collins to assist in raising funds that U.S. Representative Bill Archer (R) Texas will be giving to the Alabama State Republican Party Presumably these funds will be used by the State Party to help in the election of Wayne Parker (Bill Archer's son in law) in his bid to unseat U.S. Representative Bud Cramer. I have been asked to send our checks directly to Bill Archer at his home in Virginia.

We are trying to accomplish this as quickly as possible so please send to me by Friday of this week your contributions so that I can forward them to Mr. Archer. The checks should be made out to: Alabama State Republican Party, no corporate checks.

Thanks for your help. I believe this to be a very worthy cause in our fight to convince Representative Archer to stop his efforts to Sunset the Tax Credits. If you have any questions, please call me.

Sincerely,

/s/ ALLAN RAPPUHN
ALLAN RAPPUHN



MOBILE TELECOMMUNICATION TECHNOLOGIES
SECURITY CENTRE SOUTH, SUITE 900
JACKSON, MISSISSIPPI 08901

John N. Palmer
Chairman of the Board

July 10, 1996

[REDACTED]

Dear

I had called you several weeks ago to ask you to join the Team 100 committee of the Republican Party.

I feel we have a rare opportunity with Haley, Trent and Thad in the positions they are today.

Ed Lupberger, CEO of Entargy, joined Team 100 earlier this year, and this past Spring I saw Haley escort him on four appointments that turned out to be very significant in the legislation affecting public utility holding companies. In fact, it made Ed a hero in his industry.

If you have been considering this or if there is a chance you might, I feel it significant to Haley and the Senators if you could do this. Besides it would be a lot of fun having you at some of these meetings. Thank you for your considerations. I look forward to seeing you on the tennis courts.

Best personal regards,

/s/ JOHN PALMER
JOHN N. PALMER

NEW
YORK
LIFE

September 17, 1997

New York Life Insurance
Company 51 Madison
Avenue, New York, NY
212 576-7750

Lee M. Cammilt, Jr. CLU
Vice Chairman

Mr. Haley Barbour
Chairman
Republican National Committee
310 First Street, SE
Washington, DC 20003

Dear Haley,

As a Team 100 member, I am seeking your help in sharing our grave concerns with Republican leadership regarding the Senate's federal mental health parity mandate (attached to the VA/HUD appropriations bill). We at New York Life are opposed to this provision which will not increase mental health coverage and will decrease affordability of health care in general.

Republicans successfully foug.. President Clinton's 1993 health care reform proposal which contained numerous federally mandated requirements and benefits. Now these mandates are being considered piecemeal. I am hopeful that a Republican-controlled Congress will once again fight these proposals and resist the urge to let government determine what health benefits an employer should offer to its employees.



We support coverage of mental health benefits. However, mandating mental health parity will not increase coverage of mental health benefits. In Senator Domenici's amendment, mental health parity is only required if any type of mental health benefit is offered. Because of the cost, it is very probable that mental health benefits will be dropped entirely from plans, with the result that mental health coverage is less frequently available. Those plans that do offer mental health coverage will be vulnerable to adverse selection, creating an upward premium trend for those plans.

This mandate has not been properly considered through the Congressional legislative process. No hearings have been held in the House or Senate. Committees of jurisdiction have not had time to review the practical effects of this provision, markup legislation, and consider amendments. This mandate is not well developed as was the recent Health Insurance Reform legislation which matured over several years. It would be a severe mistake to pass this mandate at this time.

We will be calling you to discuss this. In additional, a letter from the Citizens for a Sound Economy and an article from *Investors Business Daily* are enclosed for your reference. Please call me or Mary Moore Hamrick at 202-783-1354 if you have any questions.

Sincerely,

/s/ LEE

Enclosures

**DECLARATION OF HERBERT E. ALEXANDER, Ph. D**

This report provides you with the information that you have requested regarding my opinions related to the case of *Colorado Republican Federal Campaign Committee and Douglas Jones, as Treasurer, v. Federal Election Commission.* It also summarized my qualifications, and it provides you with information about my publications and one recent case in which I have rendered an expert opinion.

**PERSONAL BACKGROUND**

I am currently the director of the Citizens' Research Foundation at the University of Southern California. I have held that position since 1958. CFR is devoted to bringing new awareness and understanding to the problems of political finance. It has pioneered the study of money in the political process: where it comes from, how it is handled and spent, and how it affects our democratic processes. It serves as a non –partisan observer and interpreter of trends in political finance and election reform, and it undertakes research, studies, seminars and publications to those ends. It also serves as an information clearinghouse for scholars, the media, and policymakers.

In addition to serving as director of CRF, I am professor of political science at USC. As reflected in my curriculum vitae, a copy of which is attached as Exhibit A, my expertise lies in the area of political finance. I have studied, written, and taught on issues related to political finance for more than thirty years, and I have been recognized as one of the leading experts in the field. I have served on several commissions (including the President's Commission on



Campaign Costs, 1961-62), task forces, and panels related to campaign finance, and I have acted as a consultant for numerous public agencies, private organizations and media entities. I have written, co-authored or edited more than twenty books and 200 articles on matters relating to money in politics, its uses and regulation.

Throughout my professional life as a political scientist, I have advocated strengthening of American political parties. I have written on the impact of the Federal Election Campaign Act on the parties, and I have testified before the Congress and state bodies that stronger political parties are an essential element in campaign finance reform. My graduate education began just following the publication of the classic *Toward a More Responsive Two-Party System*, a Report of the Committee on Political Parties of the American Political Science Association (1950).[1] That volume influenced my thinking about political parties, and while the years since have raised questions about some of the findings and recommendations, the thrust to develop a stronger two-party system has remained a professional life-long belief and interest.

Since 1982, when I was instrumental in establishing the Committee for Party Renewal, Southern California, I have actively sought that goal, and I chaired two major conferences on the subject. I also participated in the Brief Amicus Curiae of the National Committee for Party Renewal submitted on writ of certiorari to the

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[1] Toward a More Responsive Two-party System: A Report of the Committee on Political Parties, American Political Science Association, Supplement Vol. XLIV, Number 3, Part 2, September 1950.

US Court of Appeals for the Tenth Circuit in the present case.

**MODERN CAMPAIGN FINANCE REFORM**

Few would argue that many of the political reforms that were set in motion more than half a century ago were no healthy for the American body politic. In retrospect, however, some of those reforms caused new problems. For example, in the interest of taking the selection of candidates out of the hands of political party bosses, the system of primary elections was inaugurated. That system today has swollen to gigantic proportions—primary costs are high, candidates are numerous, voter turnout is low, the parties are weaker because their nomination function has been lost-and primaries are far from being the kinds of referenda that reformers in the early 20th century envisioned.

Like the earlier political reforms, those of the early 1970s relating to political finance have brought both intended and unintended results. The wave of reform in the early 1970s was fundamentally an effort to improve a system perceived by many as fraught with favoritism and corruption. Many observers felt the American system of financing elections through often unlimited private donations gave undue influence in politics and government to wealthy or well-organized donors at the expense of the un-wealthy, the unorganized and the general public. Indeed, the system did have its share of secret money, unreported money, extorted money, corporate money, laundered money, foreign money, even tax-free money. The political financing reforms of the early 1970s sought to relocate political power, to reduce the perceived influence and power of monied interests and to extend and expand



citizen participation in the governing process. It is ironic that currently, more than twenty years later, similar criticisms are being made and many of the proposed remedies are only stricter or extended forms of the same regulatory schemes that have failed to stem the tide of money.

It is important to note at the outset that it costs money to run a campaign, and campaigns have become increasingly expensive. The days when candidates kissed babies, marched in torchlight parades and passed out sponges with their names that expanded when dunked in water are long gone. The modern campaign has become very professionalized. It is not uncommon for candidates to use the services of pollsters, advertising specialists, direct mail consultants, fund raisers, and with the complexities of laws, election lawyers and political accountants. These services cost money. The costs of new technologies, radio in the 1920s, television in the 1950s, and now cyberspace, have increased the expense of running an effective campaign. We are 150 years past the time when a candidate could simply purchase a printing press and start his or her newspaper as a platform.

Too little money in the campaign process can be extremely harmful. It takes money to gain name recognition and convey a candidate's views.[2] This is particularly true for candidates that are challenging incumbents who enjoy existing name recognition and a variety of perquisites of office. Elections are improved by well-financed candidates able to wage competitive

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[2] I served as an expert witness on these matters in National Black Police Association, et al. v. District of Columbia Board of Elections and Ethics, et al.

campaigns, not by stifling political dialogue. Money is needed to amplify free speech so it can be heard by the electorate. Candidates need to convey their records, qualifications and programs in their own words, not as mediated by the media.

While there are many voices today calling for lowered campaign costs and a level playing field, the fact remains that there are many sources of funding willing to contribute to candidates, political action committees and political party committees, and to spend money directly on independent expenditures, issue advertising, soft money and self-financed candidacy. A major difficulty is that some political activities are outside the scope of the FECA, and therefore, significantly, are not accountable. When campaign funds are raised and spent by political parties coordinating their activities with candidates, the ballot provides accountability: candidates can be voted out of office and political parties can be voted out of control.

Money is not the sole campaign resource, but it is convertible into many of the resources candidates need to mount effective campaigns: professional staff, mass media advertising and sophisticated campaign technologies. Money may not win elections—the candidate who spends the most is not always victorious—but a strong case may be made that an essential element of modern campaigns is adequate financing.

One unintended result of campaign reforms has been to reinforce the splintering tendencies in our political process by limiting the roles political parties can play. Public funding directly to candidates has served to diminish the influence of the political parties because it helped free each candidate's personal organ-



ization from the party hierarchy. An increase in the number of state presidential primaries and changes in election and party rules continued a process begun after 1968, through which the national party organizations found their control of the choice of their nominees significantly reduced. The politicians, the parties, and the plutocrats were replaced by the primaries, the press, and the polls, while special interests took new forms

Reform is not neutral. It works to change institutions and processes, sometimes in unforeseen ways. Election laws are used as instruments to achieve political goals. Laws that regulate relationships between candidates and political parties, and between citizens and politicians, and that affect the relative power of interest groups and political parties, are bound to influence the entire political process and change the way in which citizens, candidates, parties and other groups participate and interact in elections.

In every society in which free elections have been held, the problem of who pays the political bills and why has arisen. The problem is to reconcile a theory of democratic government with a set of economic conditions—how to hold to the egalitarian assumption of "one person, one vote" in the face of the reality that in our democracy there is an unequal distribution of economic resources.

The problem of election reform in this unique set of circumstances may be stated in this way: how do we improve political dialogue, attract a more attentive and well-informed electorarte, encourage citizens to participate in the political process as workers, contributors and voters, yet diminish financial inequalities among

candidates and political parties and reduce the dominance of big money while opening opportunities for well-qualified persons to become candidates? How do we apply democratic principles to elections in an age of media politics, seemingly dominated by an atmosphere of dollar politics, in ways consonant with constitutional guarantees. The electoral process is a classic case of conflict between the democratic theory of full public dialogue in free elections and the conditions of an economic marketplace.

Money, after all, is symbolic. The deeper competition is for power or prestige or other values. In this sense, money is instrumental. Its importance is in the ways in which it is used by people to try to gain influence, or is converted into other resources, or used in combination with other resources, to achieve political power.

But power is distributed unequally in society; it does not vary directly with wealth, status, skill, or any other single characteristic. Rather, degree of power is determined by many such factors, no one of which stands alone. And none of which has meaning unless related to the purposes of the individual and the environment in which one acts. So money is but one element in the equation of political power. But is the common denominator in the shaping of many of the factors comprising political power because it buys what is not or cannot be volunteered. Giving money permits numbers of citizens to share energy that must go into politics. Especially in affluent America, surely many individuals find it easier to show their support for a candidate or their loyalty to a party by writing a check than by devoting time to campaign or political work. Of



course, most citizens have no special talent for politics or will not give the time. So money is a substitute and at the same time a meaningful way to participate. If money is considered as a substitute for service, somehow it does not require a firm a commitment: one might give money to both parties but is much less likely to give time to both. Money has an advantage over service, however, in that it is not loaded down with the idiosyncrasies of the giver.

The new technologies and the professionalization of politics, which were brought on in party by the laws, are having important consequences for voluntarism by requiring serious candidates to substitute paid experts for free, usually unskilled help. Corporations and labor unions can use treasury money, assigning paid workers to cope with regulation and passing along the cost in higher prices or increased dues. Because money is a scarce resource in politics, candidates, parties and political committees cannot as readily pay salaries to ensure compliance and cannot pass along the cost. When they do allocate money resources to compliance, their campaigning capability is reduced and financial pressures on them increase. Hence it is desirable to keep regulation to a minimum.

**THE IMPORTACT OF PARTIES**

Today, there are more definable groups than ever before seeking attention—business, labor, professional, public-interest-and each has its subgroups dealing with a specific industry or issue. Larger grouping are fragmented, so the voices heard most effectively are those with large resources or those achieving dramatic appeal. Pluralism may be more extensive than ever but what it heard is a vast clamor. The fragmentation is

evident in independent voting, and few broadly-based groups can deliver voters who have diverse interests. Indeed, this situation is a partial cause of current public dissatisfaction, and prompts the need for restructured and improved political parties. But to accomplish this goal, parties need to be as free of legal restraints as is possible. No force other than political parties can produce coherent majorities working in the public interest. There is need for new incentives to encourage citizen participation in the electoral process through the parties, and an open environment in which public policy alternatives can be debated fully and freely within the context of a vibrant tow-party system.

This line of reasoning suggests that it is desirable to give incentive for as much political activity as possible to be directed into regulated and disclosed channels, through candidates and parties particularly. In this regard, the roles of political parties are crucial, as regulated and disclosed channels of political activity, accountable to the electorate in the next election.

Most political scientists believe that political parties play an essential role in developing, maintaining, and securing a strong and effective democracy in the United States. The late professor Clinton Rossiter, in *Parties and Politics in America*, wrote: "there is no America without democracy, no democracy without politics, and no politics without parties.[3] Another eminent political

[3] Clinton Rossiter, *Parties and Politics in America* (Ithaca: Cornell University Press, 1960), p. 1.



scientist, Walter Dean Burnham, of the University of Texas, has written:[4]

> To state the matter with utmost simplicity: political parties, with all their well-known human and structural shortcomings, are the only devices thus far invented by the wit of Western man which some effectiveness can generate countervailing collective power on behalf of the many individually powerless against the relatively few who are individually-or organizationally-powerful.

Political parties have been defined in various ways. Edmund Burke, in "Thoughts on the Cause of the Present Discontents" wrote that "Party is a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed."[5] A much more modern definition would hold that a party is ". . . any group, however loosely organized, seeking to elect governmental office-holders under a given label.[6]

American political parties are among the oldest in the world, but their power has waned in the last half century. Historically, the parties suffered when civil service and professionalization replaced patronage; when primaries took candidate selection out of their

[4] Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York: W.W. Norton & Company, Inc., 1970). p. 133.

[5] Edmund Burke, "Thoughts on the Cause of the Present Discontents," in Paul Langford, editor, *The Writing and Speeches of Edmund Burke*, Vol. II, Party, Parliament, and the American Crisis (New York: The Oxford University Press, 1981), p. 317.

[6] Leon D. Epstein, *Political Parties in Western Democracies* (New Drunswick, N.J.: Transaction Books, 1979), p. 9.

hands; when government began to provide social services the urban party organizations used to attract the allegiance of voters; when television focused dramatically on the candidate independent of his or her party; when immigration declined, the movement to the suburbs accelerated, and urban party organizations lost some of their support and reasons for being; when education led to the ethic to vote for the "better person", however perceived, leading in increased ticket-splitting. American politics has become excessively candidate-oriented and the parties may operate parallel campaigns of their own, or even better, work with their candidates in joint campaigns. Now one of the last remaining ties between the party and the candidate-money-has been restricted or provided by government directly to some candidates, thus reinforcing the splintering and fragmenting tendencies already present in our candidate-centered culture.

Party decline has led one political scientist, James David Barber, of Duke University to suggest that "[t]he media in the United States are the new political parties."[7]

Political parties have adjusted to the advent of modern technology, professional campaign consultants, and candidate-centered campaigns by developing financial, technical and organizational resources of their own, enabling them to play significant roles in present-day campaigns. Parties are a multi-layered phenomenon, involving many different kinds of

[7] Quoted by Gary R. Orren, "Thinking About the Press and the Government," in Martin Lipsky, editor, *Impact: How the Press Affects Federal Policymaking* (New York: W.W. Norton, Inc., 1986), p. 10.



organizations and activities under a common name and reflecting our federal system with party committees and candidates at the national, state and local levels of political activity. They also have sought to centralize and unify campaigns by working to achieve wider cooperation with party committees and candidates at the national, state and local levels of political activity. And they have sought to advance party building as an essential element of competition in the electoral arena.

Political parties participate in political socialization by transmitting values and information. They contribute to the accumulation of political power by aggregating masses of individuals and groups, enabling the party to govern. They dominate the recruitment of elected officials and political leadership, even though they have lost control of the nominating process of primaries and caucuses. Nevertheless, parties are a force for unification in a divided American political system. Parties system. Parties bring coherence while simplifying electoral choice.

Political parties are institutions that animate the political process. They are an integral part of the campaign process. They provide continuity and stability year in and year out, with or without elections. Their endurance has been demonstrated historically. They work and assist candidates by helping with funding and spending, particularly in general election campaigns. Often, but not always, the work of the parties is coordinated with candidates on the party ticket. At the federal level, coordinated expenditures are provided for in the law, and serve as an important link between parties and candidates.

**PACs AND PARTIES: A COMPARISON**

It is inaccurate to characterize parties as "super PACs" or PACs as "mini-parties." PACs may sometimes seek to influence party nominations, occasionally with their own candidates, but PACs generally do not extend their electoral activities beyond making financial contributions, seeking to influence candidate recruitment by parties, and voter mobilization. Many interest groups are unable to mobilize their supporters as readily as they once could, and their main activities are in financing and also in lobbying once candidates are elected to office.

Political party committees generally do not become involved in financing the campaign of any candidate of the party's nomination, unless that of an incumbent President or Governor running for reelection. PACs may contribute as much as $5,000 to any candidate for presidential nominations, but unlike individual contributions, PAC contributions are not matchable by federal funds. In practice, PACs have played a rather limited role in direct presidential pre-nomination campaign financing; in recent years, PACs have contributed less than 1 percent of the pre-nomination receipts of presidential candidates.

In the general election period, majory party nominees for the presidency are automatically eligible for public treasury grants to finance their campaigns. These grants are given directly to the candidates' own campaign organizations. The public grant also serves as a general election campaign expenditure limit. Minor party and new party candidates may qualify for partial public subsides under specified conditions. Major party nominees who accpt public funding for the



general election period are prohibited from raising private funds to further their campaign efforts. Candidates, however, may raise funds from private sources to help pay the costs of complying with the campaign finance laws. In recent years, presidential candidates and their staffs also have worked to raise "soft money" for use by their party.

Under the FECA, the national parties can make coordinated expenditures on behalf of both presidential and congressional candidates. Coordinated expenditures by parties are extensions of the candidates' campaigns in which the parties agree to pay expenses for certain obligations incurred by candidates' campaigns. Coordianted expenditures were considered to be so important by the Congress in writing election laws that they were provided for in the publicly funded presidential campaigns, and in the non-publicly funded congressional campaigns.

The national committees of the political parties may make coordinated expenditures on behalf of their presidential and vice presidential candidates up to two cents per voting-age person adjusted by the Consumer Price Index. In 1996, both the Republican National Committee and the Democratic National Committee made coordinated expenditures for their general election presidential tickets.

In addition, state and local party committees may spend unlimited amounts on behalf of their parties' presidential tickets so long as the money is expended on volunteer activities, which may include phone banks, voter registration and voter turnout drives. Money used for these purposes, sometimes called "soft money", may be raised and spent under laws in the individual

states in which such activities are conducted. The state laws often are more permissive than federal laws; some twenty states permit corporate and labor union political contributions and give freer rein to individual and PAC contributions. Often, too, the state disclosure provisions are not as strick as the federal disclosure requirements.

Party committees also may spend unlimited amounts on preparing and distributing sample ballots or slate cards and on campaign materials used in conjunction with grass-roots, volunteer campaign activity, such as buttons, yard signs and bumper stickers. Such spending may benefit the entire party ticket from the presidential and vice-presidential candidates to candidates for local offices.

In a surprising development in 1996, large amounts of soft money, about $69 million, was spent by the parties on televised issue advertising that was nationally directed by the presidential campaigns; this became a very controversial use of what was intended by the 1979 Amendments to the Federal Election Campaign Act to be money for party grassroots activities.

PACs may not contribute directly to a publicly-funded presidential general election campaign. Such committees and their corporate or labor organization sponsors, however, may spend treasury funds to assist specific presidential candidates, for example, through partisan communications with their restricted classes of persons, through ostensibly non-partisan voter registration and turnout drives and, in the case of PACs, through independent expenditures, or as soft money.



Party coordinated spending in Senate contests is determined according to state population while campaigns for the House are all eligible to receive an amount based on an average of populations in House district. In 1996, party coordinated expenditures in U.S. Senate campaigns amounted to $19.9 million in addition to party contributions (limited to $17,500 per candidate per campaign period) totalling $1.6 million. Also in 1996, party coordinated expenditures in U.S. House campaigns amounted to $15.1 million, and party contributions to House candidates (limited to $5,000) totalled $4.1 million.[8] These amounts illustrate the legally-sanctioned need for candidates and parties to work closely together. National party committees spent additional amounts on televised issue spot announcements, "institutional advertising", and party-building activities designed to promote the party and its issues. Accordingly, party support is more than the dollor amount. The party contributions in direct assistance to candidates are much greater and it is important to note that the party is not considered to be a corrupting influence. (See Exhibit B).

Federally-related party committees have raised more than PACs in recent election cycles—$627.9 million gross in hard and soft dollars, compared with PACs $437.4 million in the 1995-96 election cycle. Yet total PAC contributions to presidential, Senate and House candidates and PAC independent expenditures for or against candidates have exceeded national party contributions to candidates combined with limited party

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[8] Federal Election Commission, "FEC Reports Major Increase in Party Activity for 1995-1996," press release, March 19, 1997, p. 5.

contributions and coordinated expenditures on their behalf by a 3-1 ratio (PACs $228.4 million compared with parties $71.0 million in the 1995-96 election cycle).[9]

In the 1995-96 election cycle candidates for Congress raised $790.5 million and spent $765.3 million. As Exhibit B indicates, PACs contributed or spent independently $228.4 million and parties contributed or spent in coordinated or independent expenditures only $71 million. Party contributions are law because party contribution limits to federal candidates are low: $5,000 per election to House candidates, and $17,500 to Senate candidates per calendar year in which the candidate seeks election. Amounts of party contributions to Senate and House candidates totalled only $5.9 million.

And party coordinated expenditures are relatively low, also, based on two cents multiplied by the State Voting-Age Population (plue a cost-of-living increase). The amount of coordinated expenditures totalled some $53.6 million, which was the largest component of party assistance. But $18.4 million went to the presidential campaigns, leaving only $35.2 million for scores of Senate and hundreds of House candidates. Party independent expenditures, totalling $11.5 million, were a new feature of the 1996 campaigns, following the Supreme Court decision in the instant case, which sanctioned them.

In the decades since 1974, when coordinated expenditures were allowed for both presidential and congressional campaigns, there has been any dispute relating to them, no charges of corruption or the

[9] Federal Election Commission, "PAC Activity Increases in 1995-96 Election Cycle," press release, April 22, 1997.



appearance thereof, so clearly coordinated expenditures could be increased substantially or unlimited without fear of corruption. One party may have more money to spend on coordinated expenditures, causing some grumbling, but neither major party has made official complaints about the factor.

The political parties are limited in the amounts of coordinated expenditures they can make on behalf of both presidential and congressional candidates, but the limits were enacted with a view to reducing overall spending, not because coordinated expenditures were in any way considered to be corrupting. Coordinated expenditures could be without limit and there would be no question of corruption or the appearance of corruption. Individuals and PACs were not given the privilege of coordinated expenditures; they were limited in the amounts they could give, but beyond them, of course, they can engage in independent expenditures, issue advertising, or giving soft money. The reason the law specifies coordinated expenditures lays in the harmonious interactions that parties and most—but not all—candidates have. Political science studies have shown that party loyalty is a stronger determinant of roll call voting in the Senate and House than are ideology, constituent needs and desire, or patterns of contributions.[10] Thus coordinated expenditures are sanctioned by law but because they are limited by voting age population in any state, they tend to be minimal even in very large states. In Colorado,

[10] Summarized in Larry J. Sabato, *PAC Power: Inside the World of Political Action Committees.* (New York: W.W. Norton & Company, 1984), pp. 136-40.

party coordinated expenditures on behalf of a senatorial candidate were only $170,932 in the 1996 elections.

Historically, political parties at the peak of their influence, recruited candidates and, with the aid of patronage, jobs and other favors, enlisted armies of campaign workers who canvassed door-to-door, organized meetings and rallies and turned out the vote. State and local committees were of chief importance in conducting this electoral activity, not only in senatorial and congressional elections but also in presidential elections. That party committees, particularly national party committees, can provide candidates with limited sums of campaign money—as now is the case at least with the party coordinated expenditures on behalf of presidential and selected congressional candidates—simply represents significant amounts of money in statutorily-sanctioned party activity on behalf of candidates.

In terms of dollars, party support outweighs PAC support of presidential candidates whereas PAC contributions are greater in Senate and House campaigns. In the aggregate PACs can contribute more than parties because there is no aggregate limit for PACs; PACs can contribute up to the contribution limit to an unlimited number of candidates. Party support cannot be evaluated only in dollars but must include intangibles, such as the value of campaign related activities and the candidate's use of the party label. Recognition of these facts helps place comparisons of PACs and parties in perspective.

The United States has not developed labor parties or Christian Democratic parties, as other mature democracies have. The country is too diverse, with



many conflicting special interests and only two major parties, so party and candidate appeals have to be calibrated to broad parameters beyond single special interests.

Alexis de Tocqueville observed in the 1830s, American political life often has witnessed the creation of new forms of association to further people's interests and goals.[11] Such associational activity inevitably comes with a vibrant democracy. PACs represent an aspect of American pluralist democracy, not only because the rights of association and speech are protected by the First Amendment.

Many PACs are ideology-and issue-related, thus providing a significant means of expression. Some 4,000 PACs are registered with the FEC, and an estimated 12,000 exist at the state level. These numbers are impressive, representing many diverse views and interests. PACs financial participation in campaigns is disclosed and limited. In this respect, PAC participation is preferable to groups' engaging in independent expenditures, or asking their members to contribute directly as individuals.

PACs have made several significant contributions to the political system. They increase participation in the political process. They allow more voices to be heard in determining who will be elected. PACs also allow individuals to increase the impact of their political activity given that they attain a sense of achievement that accompanies taking part in political activity with like-minded persons, instead of merely acting alone.

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[11] Alexis de Tocqueville, *Democracy in America* (New York: Alfred A. Knopf, 1994).

Additionally, PACs are a mechanism for political fund raising that respects the manner in which society is structured. Occupation and interest groups, which PACs represent, have replaced the neighborhood wards or precincts as centers of political activity.

Thus PACs encourage the lively pluralism so highly valued and forcefully guaranteed by the Constitution. PACs also help ensure the transmission of candidates' views and positions, while encouraging the participation of individuals without wealth to run for office. Finally, PACs had contributed to greater accountability in political financing. By sanctioning the use of PACs, the laws governing them have replaced the undisclosed and questionable forms of secret money derived from sources PACs now represent. But PACs are relatively new in the political arena compared with parties which have endured through American history.

Political parties have some surface similarities with PACs and other groups: they all act in the political arena, they all seek to elect candidates of their choice, they all spend money, they all want some policy outcome. But parties have one vital difference from interest groups: while the various interest groups (and their PACs) usually have one specific goal or concern, political parties represent an amalgam or coalition of interests and goals; moreover, the purpose of parties is to gain control of government, rather than to pursue single goals, as PACs do. For example, the Sierra Club seeks to protect the environment. The Business Roundtable looks out for big business. The AFL-CIO represents union members and workers. The NAACP speaks out for racial minorities. The National



Organization for Women pushes feminist causes. And so on.

Political parties seek to win elections by bringing together coalitions of such groups and by articulating issues that will resonate with voters. Political scientists generally value highly this activity as important consensus building in a diverse democracy.[12] Also, using the party as a financial intermediary weakens the potentially corrupting link between contributor and office-holder. Accordingly, the concept is to strengthen the parties' roles in campaigning, where the parties act as service organizations for candidates, providing broadcast facilities, pooling polling and other functions that by mass purchase may reduce costs for individual candidates.

As noted above, interest groups tend to be very parochial in their politics. By contrast, our two major parties have always been broad coalitions. Both parties are required to build broad coalitions and tack to the center. Interest groups usually respond to just one set of issues or constituents. Parties cannot afford to be captured for very long by single issue advocates.

Unlike special interest groups or PACs, parties must appeal to majorities in the electorate if they are to win; and unlike single issue organizations, they must win many races if they are to govern. Parties thus give coherence to American politics. Parties have been a

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[12] See, for example, David E. Price, *Bringing Back the Parties* (Washington, D.C.: CQ Press, 1984); and Larry J. Sabato, *The Party's Just Begun: Shaping Political Parties for America's Future* (Glenview, IL: Scott Foresman and Company, 1988).

unifying force in this system, building coalitions and making mass democracy possible.

Limits on party contributions or expenditures cannot be considered merely marginal restrictions. The primary purpose is for the party to communicate as widely as is possible, and it does this in part on its own and in part through its candidates. In lieu of unlimited party support, PACs representing special interests compete for the candidates' attention. It enhances democracy to encourage the broader interests parties represent, than the narrower interests of PACs. Party support leads to enhanced accountability, and hence is highly desirable.

**CORRUPTION**

The word "corruption" is widely misused and wildly exaggerated. Some but not all of what is called corruption consists of legally-sanctioned actions that some people do not like; political contributions when defined and limited in law would seem to fall in that category. Political corruption cannot be defined in the commonly-accepted meaning of the term. It is not bribery, nor even legalized bribery, as some critics put it; that is covered by existing statutes relating to one-on-one exchanges of money. Rather, in political terms, the giving of a sizable contribution usually represents only a potential of good will and perhaps disproportionate access to public official in order to plead a case for public policy change. It is a means of gaining access in order to make one's view known. While it may ensure access and perhaps unequal political influence, it does not necessarily provide the claimant with a favorable public policy. If by corruption critics mean influence or influence-peddling, then these lead to a slippery slope



because so many factors may be influential in a decision—religion, school, family, ethnic background, others, all may influence a public official's public actions. Even without making a money contribution, access is likely to be granted to a representative of a company employing hundreds or thousands of workers crucial to a district or state; or to a union leader representing a substantial membership.

*Webster's Dictionary* defines corruption as "an impairment of integrity, virtue or moral principle . . . an inducement by means of unlawful or improper means."[13] In the *Encyclopedia of Political Parties & Elections in the United States*, a political science definition of corruption in relation to urban machines was given: "all machines were corrupt to varying degrees. They were in business for profit, and they all stole in one manner or another from the public treasury."[14] As we shall see, money raised by and for a modern-day political party for its own candidates does not fit either definition.

In their *amicus curiae* brief to the Supreme Court in the instant case, the Committee for Party Renewal (hereafter "Committee") reviewed the Supreme Court's ruling in regard to corruption and campaign finance law, saying "the only compelling interests recognized by this Court supporting the Federal Election Campaign Act's limitation on political speech are the

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[13] Philip Babcock Gore, editor, *Webster's Third New International Dictionary of the English Language*, unabridged (Springfield, MA: Merriman-Webster, Inc., 1986), p. 512.

[14] *Political Parties and Elections in the United States: An Encyclopedia*, general editor L. Sandy Maisel (New York and London: Garland Publishing, Inc., 1991), pp. 1161-62.

risk of actual corruption or the appearance of corruption."[15] The Committee quoted the Supreme Court's landmark *Buckley v. Valeo* decision: "the primary interest served by the Act as a whole, is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." Thus, unless a party's financial support of its candidates is somehow corruptive, or appears to be corruptive, the government has no compelling interest in limiting such activity.

The Committee then wrote: "Political party support of its candidates is not corrupting. No conventional concept of corruption delineates the candidate-party relationship," which needs to be understood as symbiotic.[16] After all, parties are formed to win elections, not make a profit as in the political science definition given above. Parties do not bribe candidates or "induce them to do wrong" as in the Webster's definition. (Private interests occasionally do as in the Abscam or "Keating Five" cases).

A strong two-party system imbued with a professional code of ethics might have prevented Watergate or the 1996 experience of alleged improprieties with respect to the solicitation and acceptance of certain foreign or other political contributions. The two major

[15] *Brief Amicus Curiae, Committee for Party Renewal, Colorado Republican Federal Campaign Committee and Douglas L. Jones v. Federal Election Commission*, on writ of certiorari to the United States Court of Appeals for the Tenth Circuit, October Term 1995, p. 8.

[16] *Ibid.*, p. 10.



parties expect to be in business indefinitely and supposedly neither would willingly pursue tactics that would bring revenge or disgrace. However, both Watergate and the 1996 experience can happen when the parties are dependent on presidents or the Congress, rather than the opposite—when the party is accountable to popular majorities and each officeholder is accountable to the party.[17] One certainty is that disclosure of campaign financial data in 1996 was largely responsible for the information leading to news about the scandal.

One other question of presumed party influence over candidates needs mentioning. Critics say that unlimited party contributions threaten the individual and PAC contribution limits because individual or PAC contributions to parties can be used to supplement those limits. For example, an individual donor can give the maximum to a candidate, then give more to the candidate's party, which in turn can give to the same candidate or spend on the candidate's behalf. Thus the party could serve as a conduit to enable contributions above and beyond the individual's contribution limit. However, the party is an autonomous entity and has its own leaders and its own decision-making procedures and criteria as to which candidates will receive party financial support. The party will not redirect the money to the candidate automatically, but will decide on the basis of its multiple claims which money will go to which candidates. Party decisions are based on need and perceptions of candidate electabilty and are likely

[17] Stephen Hess, *The Presidential Campaign: An Essay*, third edition (Washington, D.C.: The Brookings Institution, 1988), pp. 86-87.

to be determined jointly with the candidates as to what spending is justified. If money is earmarked by the donor requiring that the party assist a named candidate, under federal law, the required disclosure must include information that the contribution is directed. Thus the public, the media, and the Federal Election Commission would know that the contribution was earmarked and could act on that information accordingly.

The attitudes of Members of Congress toward their parties surely differ, but a common view was expressed by former Democratic House Speaker .Thomas P. O'Neill, who stated that those who entered the Congress since Watergate and the Vietnam War" . . . had no loyalty to the party whatsoever. They looked down on it. They said, "The party didn't elect me, and I'm not beholden to the party."[18] Campaign consultant David Garth even notes that "the [political] boss is a plus to have against you."[19]

While surely this O'Neill quotation is an exaggeration, some sixteen years later, clearly many Members are quite independent of the party, both programmatically and financially. Reinforcing that position, O'Neill also said that the party leadership in the House always understood and accepted that some Members had to keep their distance from the party.[20] In these circumstances, the party would hardly be able to corrupt

[18] Quoted in Steven V. Roberts, "For New Speaker, New Role is Seen," *The New York Times*, December 8, 1986.

[19] Quoted in Alan Eysen "Tracking the Decline of Party Organizations," *Newsday*, April 23, 1981.

[20] *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill*, with William Novak (New York: Random House, 1987), pp. 281-83.



the Member, no matter how much money or support it provided. Winning the next election takes precedence over party loyalty. The view that America typifies a candidate-centered culture, with a great deal of candidate independence, is widespread among political scientists.[21] Elected officials do not like to be beholden to their party or to a contributor. They value their independence. To quote one scholar: "Politicians prize votes more than dollars,"[22] and one may add, "or party."

Political parties do not corrupt public officials through making contributions or providing support to them. There is no reason to believe that unlimited party coordinated expenditures would corrupt candidates or public officials. Party leaders and public officials are more likely to engage in joint decisions on what level of support is desirable for a given candidacy. Their common ideology and need to win elections should inform party decision making, not pressure on the basis of contributions or assistance given. For the most part, party leaders and public officials are engaged in a joint enterprise seeking common goals.

In this context, it is important to point out that individuals contribute money to politics for a variety of reasons. A recent study of contributors suggested that there are a variety of motives that can be factored into three basic reasons: purposive, solidary (social), and

[21] Martin F. Wattenberg, *The Decline of American Political Parties*, 1952-1980 (Cambridge, MA, Harvard University Press, 1984); and Martin F. Wattenberg, *The Rise of Candidate-Centered Politics: Presidential Elections of the 1980s* (Cambridge, MA: Harvard University Press, 1991).

[22] Alexander Heard, *The Costs of Democracy* (Chapel Hill: The University of Noth Carolina Press, 1960), p. 6.

material.[23] Purposive behavior includes those who participate in politics to influence governmental policies or to make a difference in the outcome of an election. Solidary includes those who give out of friendship for a candidate, those who enjoy the social contacts that politics provide, or those who seek recognition. Material behavior refers to those who give for business or employment reasons or because it is expected of someone in their position. These categories are not mutually exclusive and may jointly apply to motivations for giving by some individuals or PACs.

Not all these categories apply to contributions made by party committees to candidates on the ticket. The most relevant is the purposive motivation, to seek to influence governmental policies and to make a difference in the outcome of an election. This purpose well describes the ideological content of a party committee, which is surely to elect as many candidates as possible in order to gain control of a legislative chamber or an executive position, in order to further party platforms and positions, as well as to benefit from the spoils of victory, the appointments and domination of the decision-making processes of government.

This review of relationships among parties and public officials leads to the conclusion that party spending does not lead to corruption, nor would unlimited party assistance to candidates lead to corruption.

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[23] Clifford W. Brown, Jr., Lynda W. Powell and Clyde Wilcox, *Serious Money: Fundraising and Contributing in Presidential Nomination Campaigns* (Cambridge: Cambridge University Press, 1060), p. 6.



One other factor in party support of candidates on the ticket is important. That is, political scientists have constructed indices of political participation, ranging from talking about politics to writing letters to public officials to volunteering time to work for the party or candidate, to voting, to soliciting or contributing money.[24] These latter two points in the index convey the thought that contributing money is a significant form of political participation, which in a democracy is to be encouraged, not discouraged. Contributing money thus can be an act that is positive, part of a complex of activity thought to be desirable in a pluralistic, democratic society.

Looking to the future, the parties need to become the anchors of a political system in which they are dynamic and relevant instrumentalities producing the best combination of national interest and state and local concerns. The single most important byproduct of the activities of the parties would be to help create a climate and an infrastructure in which the parties could pursue, each in its own way, the improvements in financial operations and support so necessary to the proper functioning of the political and electoral systems. In our candidate-centered culture, it is desirable to keep candidates close to the parties on whose tickets they run. Parties have concerns other than merely electing a president or a senator; there is some thought to the future, to long-term responsibility to protect the

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[24] See, for example, Lester W. Milbrath, *Political Participation: How and Why Do People Get Involved in Politics* (Chicago: Rank McNally & Company, 1965), p. 18; and Sidney Verba and Norman H. Nie, *Participation in America: Political Democracy and Social Equality* (New York: Harper and Row, Publishers, 1972), Table 2-1, p. 31.

party's reputation. Ultimately the way to get more accountability and responsibility in political finance would seem to be through democratically-reformed and strengthened political parties, not by enhancing candidate independence.

**INDEPENDENT EXPENDITURES**

Independent expenditures are much more likely to help or hurt individual candidates and only indirectly to affect parties. One exception occurred in 1980, when independent advertising against five Democratic Senators was effective in helping Republicans gain control of the U.S. Senate.

In upholding the First Amendment guarantees of freedom of speech and freedom of association, courts have consistently held that individuals and groups have a right to use independent expenditures to communicate with voters; while the law may limit expenditures by a campaign in circumstances where public financing is provided in exchange, individuals and groups have the right to spend unlimited amounts of money to advance or undermine a given candidacy, so long as they do not coordinate their activities with the campaign.

While supporting the letter and spirit of this doctrine, nevertheless, independent expenditures raise questions about accountability; independent expenditures can shape campaign discourse and popular opinion but, unlike candidates and parties, individuals and groups engaging in independent expenditures do not appear on the ballot and, as a result, cannot be electorally rewarded or punished for their conduct. Thus, despite their disclosure, independent expenditures lack



accountability and they are an inefficient way to campaign.

However, there is one recent use of independent expenditures that is accountable, when undertaken by political parties. In the instant case, the Supreme Court sanctioned independent expenditures by party committees. On one level, it is possible to agree with the Court's reasoning that if PACs and other groups have the right to independent expenditures, so should parties, as freely-associated groups of like-minded persons, have the same rights. But the Supreme Court failed to note that by their very nature, parties seek to integrate their campaigns with those of candidates on the ticket. The closer the association the better, and an artificial separation is not desirable. Those who value parties' integrative role will view this development as counter-productive. But the party independent expenditures disclosed in 1996 were minor amounts in the context of all party spending in the 1996 elections.

It is a natural relationship for parties and candidates to work together toward the common goal of winning elections, by coordinating their activities. This close relationship does not increase the risk of corruption, but rather encourages party committees to support with funding candidates who are faced with millionaire opponents, negative independent expenditures or negative issue advertising by interest groups. Accordingly, anything such as independent expenditures that would tend to isolate the party, or part of it, from candidates, destroys the healthy relationship among candidates and parties whose labels they use.

Independent expenditures are not natural acts for parties. The normal workings of parties include:

recruiting candidates and writing platforms, raising funds to support those and candidates and organizing voters. It seems to be an unnatural act for a party to go outside its normal structure with an "independent expenditure." Yet, if the campaign finance reformers succeed and outlaw these natural acts for the parties, then they will increasingly have to use independent expenditures to get their message out. Candidates cannot win without a clearly communicated message that is heard by a majority of the voters. If parties cannot present their message through the traditional means—i.e., advertising—then the burden will fall on other groups, mainly special interests. What makes the most sense is to give the widest berth to permit parties to participate as fully as they can; preventing parties from electioneering will only leave message presentation up to uncontrollable and unaccountable special interests.

On its face, the theory of independent expenditures conflicts with the idea of coordinated expenditures. One may ask how a part can both communicate with candidates in providing money support, while at the same time not communicate when providing independent expenditures on behalf of its candidate or against its candidate's opponent. Certainly unlimited coordinated expenditures are a preferred way to proceed.

**SPENDING LIMITS AND FREE SPEECH**

One aspect of free speech is the question of whether to impose spending limits. Those who advocate expenditure limit do so on two grounds: (1) to control high costs; and (2) to level the playing field so there is not a wide disparity between spending by candidates for the same office. In response, it can be said that



spending is impossible to control. Time and again, legislation has been proposed (and occasionally enacted as in 1911, 1925, 1940, 1971, and 1974) supposedly designed to control or limit political spending, but without success at any time.

Since 1976, in the Supreme Court decision in *Buckley v. Valeo*, spending limitations are sanctioned as constitutional only when imposed as a condition of the acceptance of public financing by a candidate. In this way, public financing provides a linkage making spending limits constitutional. With respect to spending limits, in the 1996 presidential general election campaigns, three distinct but parallel campaigns were conducted.[25] Only one of them operated under legally-imposed spending limits; the other two were not limited, and so account for additional spending not controlled by the limits. The three campaigns break down as follows: in the first campaign, spending was limited by law to the $61.8 million provided in public funding. This money could be supplemented by allowable national party coordinated expenditures of $12 million, making the official spending limit $73.8 million.

In addition to the public funding given to all major candidates (the Democratic and Republican nominees plus Ross Perot in the general election period in 1996), federal law allowed the two national parties to spend another $12 million on coordinated expenditures. As noted earlier, these coordinated expenditures are specifically directed by the two major parties on behalf of their presidential and vice-presidential nominees.

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[25] Herbert E. Alexander, "The Money Story," in *America at the Polls 1996* (Storrs, CT: The Roper Center for Public Opinion Research, 1997), Table 7, p. 146.

They are not like independent expenditures because that party nominees and chairmen have direct control over how and where this money is spent. In 1996, these funds were mainly used to supplement advertising in key target states such as California. Coordinated funds are an extension of the candidates' campaigns. Parties agree to pay expenses for certain obligations to be incurred by its candidates and coordinated spending goes toward paying some of these costs.

In the second campaign, however, spending is provided for, but not limited under the law. A small portion represents funds raised under the law to pay the costs of legal compliance. A much larger portion was used to pay direct and indirect campaign costs, beyond the limits. This was "soft money" contributions raised by the parties outside federal limits from wealthy individuals, corporations and labor unions. It represented money spent on the nominees' behalf by labor unions, trade associations and membership groups on partisan communications with their constituencies and on nominally non-partisan activities directed to the general public but clearly intended to benefit the nominees. This money was in addition to labor PAC contributions, which are statutorily limited.

In the third campaign, independent spending was conducted by individuals and groups legally permitted by the First Amendment to spend unlimited amounts to advocate the election of defeat of specific candidates, as long as they do so without consultation or collaboration with candidates and their campaigns.

Adding together the amounts spent on these three aspects of the presidential campaigns in 1996, as seen in Exhibit C, a total of $151.4 million was spent by or on



behalf of the Clinton-Gore ticket, and $130.3 million by or on behalf of the Dole-Kemp ticket.

Thus all three phases of the presidential selection process provided evidence that the overall spending limits were not effective.

While there was increased spending by the parties and candidates in 1996, there also was a marked increase in spending on behalf of, or against, candidates by political parties, labor unions, businesses, the Christian Coalition and others. Some of this money was disclosed and some was not disclosed, and some was beyond the control of the candidates and parties. In contrast, party spending is fully disclosed, and the parties and candidates jointly control how the money is spent.

Indeed, the payouts from the Presidential Election Campaign Fund hit an all-time high of $234 million in 1996, and the Citizens' Research Foundation estimate that a total of 4 billion dollars was spent on all political campaigning in the 1995-96 election cycle. (For perspective that figure is roughly equal to the federal deficit in 1970, but a bit less than the combined advertising budgets in 1996 of the country's two largest advertisers, Procter and Gamble and Philip Morris).

At the very least, the development of these three parallel campaigns underlines the futility of attempting to impose a strict system of campaign spending limits. In our political system-animated by a variety of competing interests, each guaranteed freedom of expression—when the flow of money is restricted at any point in the campaign process, it will inexorably carve new channels through which individuals and

groups can seek to influence political campaigns and elections.

Our pluralistic system has been criticized as favoring organized groups with abundant memberships or resources, but not necessarily helping the unorganized: the poor, the black, consumers, youth and the elderly. One of the roles of political parties is to advocate public policies that would assist these elements of the population. Indeed, parties are sometimes charged with being servants of special interests but they are as often countervailing forces against certain special interests. They cannot long be identified solely with a single special interest to the detriment of their wider role as aggregators or brokers of numerous, sometimes opposed, diverse interests.

## CONCLUSION: POLITICAL REFORM AND REALISTIC IDEALISM

Politics is about people and groups of people, their ideas, interests and aspirations. Since people seek political fulfillment partly through parties and partly through interest groups, a politics in which supportive groups are excluded or seriously impaired is difficult to envisage. Too many ideas and interests of value to society would get lost without the organized participation of groups in electoral politics. Some groups with few members participate mainly through their wealth. Since people and groups differ, conflict occurs, but it does so in a political arena in which government sets the rules and the players are expected to play by them. The government, however, is also a player and the only fail-safe guarantee against its dominance lies in the ability of groups and interests in society to articulate their demands, to coalesce through political parties, and



to oppose government policies with whatever resources, including money, that they command.

The three most significant events of the last three decades—the civil rights movement, the Vietnam peace movement, and political reform—originated in the private sector, where the need for action was perceived and where the needed organizations were established to carry it out. Also, the women's and gay rights and environmental movements bubbled up from the grassroots. Government reacted but did not initiate the activity, and government was part of the problem in each case. Hence, there is a strong case for the continued existence of interest groups, which are aggregations of like-minded people whose political power is enhanced by combining forces in coalitions allied with political parties. Without parties, individuals in mass society are atomized and ineffectual.

The most enduring changes normally are made by those with a stake in the outcome: by the incumbents, the major political parties and major interest groups. In the early 1970s, reformers and the media helped set the outer limits of reform by conditioning the atmosphere. But the actual changes were forged in the arena of political pressures, limited by the Constitution as interpreted by the courts.

What the federal and many of the state laws need is campaign finance regulation that is both constitutional and pragmatically designed to keep the election process open and flexible, rather than rigid, exclusionary and fragmented.

Candidate and party interdependence enhances political responsibility and accountability. Candidates

and party interdependence also tends to lead to easier mobilization of party majorities in the Congress. And finally, it leads to stronger candidacies among challengers and in open-seat contests.

Of course, the ultimate means of reducing financial pressures on candidates is to enable the political parties to help candidates with unlimited support.



**EXHIBIT A**

**HERBERT E. ALEXANDER**

**Professor of Political Science and**
**Director, Citizens' Research Foundation**
**University of Southern California**
**3716 South Hope Street, #328**
**Los Angeles, California 90007**

Born: Waterbury, Connecticut
December 21, 1927

Married; 3 children

| | | |
|---|---|---|
| Education: | 1949 | B.S. Political Science University of North Carolina |
| | 1951 | M.A. Political Science University of Connecticut |
| | 1958 | Ph. D. Political Science Yale University |
| Experience: | 1954-55 | Administrative Assistant and Research Fellow, Money and Political Project Institute for Research in Social Science, University of North Carolina |
| | 1956-58 | Instructor, Department of Politics Princeton University |

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|---|---|---|
| | 1958 - | Director, Citizens' Research Foundation Princeton, New Jersey (1958-78) Los Angeles, California (1978—) |
| | 1965 | Visiting Lecturer, Department of Politics Princeton, New Jersey |
| | 1967-68 | Visiting Lecturer, Department of Political Science, Wharton School, University of Pennsylvania |
| | 1977 | Visiting lecturer, Department of Political Science, Yale University |
| | 1978 - | Professor of Political Science University of Southern California |
| Commissions: | 1961-62 | Executive Director, President's Commission on Campaign Costs |
| | 1966-67 | Member, White House Study Group |
| | 1969-70 | Member, Task Force on Financing Congressional Campaigns, Twentieth Century Fund |
| | 1983-84 | Member, Task Force on Political Action Committee, Twentieth Century Fund |



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| Consultancies: | 1962-64 | To the President of the United States |
| | 1965-67 | To the Department of Treasury |
| | 1966 | To the Columbia Broadcasting System - News |
| | 1966-67 | To the House Administration Committee, U.S. House of Representatives |
| | 1966-68 | To the Committee for Economic Development |
| | 1968-69 | To the Institute of Public Affairs |
| | 1968-69 | To the Commission on Campaign Costs in an Election Era |
| | 1968-69 | To the National Commission on the Causes and Prevention of Violence |
| | 1968-69 | To the Special Committee on Congressional Ethics of the Association of the Bar of the City of New York |
| | 1971-72 | To the Sloan Commission on Cable Communications |

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| 1972-73 | To the John and Mary R. Markle Foundation |
| 1972-73 | To the Comptroller General and the Office of Federal Elections |
| 1973 | To the Subcommittee on Campaign Spending and Contributions of the Legislative Research Commission of Kentucky |
| 1973-78, 1982 1986-88 | To the New Jersey Election Law Enforcement Commissoin |
| 1973-74 | To the Select Senate Committee on Presidential Campaign Activities |
| 1974 | To the Governor's Commission on Campaign Reform, Providence, Rhode Island |
| 1974-76 | To the New York State Board of Elections |
| 1974 | To the Ethics Committee of the Better Government Association in Chicago |
| 1974-76 | To the Illinois State Board of Elections |



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| 1974-75 | To the Congressional Research Service, Library of Congress |
| 1978-79 | To the Ford Foundation |
| 1979 | To the Accountants for the Public Interest |
| 1981 | To the Institute for the Future, Menlo Park, California |
| 1982 | To "20/20", ABC News |
| 1983 | To the Alabama Council for the Humanities |
| 1984 | To the California Commission on Campaign Financing |
| 1985-86 | To the Commission on National Elections, Center for Strategic and International Studies, Georgetown University |
| 1985-86 | To the President's Commission on Organized Crime |
| 1987 | To the Office of the Governor, Rhode Island |
| 1987-88 | To the New York City Charter Revision Commission |

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| 1987-88 | To the New York State Commission on Government Integrity |
| 1988 | To the Campaign Finance Task Force, Connecticut |
| 1989-92 | To the Campaign Finance Board, New York City |
| 1990 | To the Senate Campaign Finance Reform Panel (appointed by Senators George Mitchell and Robert Dole) |
| 1996 | To the Indian General Assembly Committee on Campaign Finance |

Dr. Alexander has written, co-authored or edited more than twenty books and 100 articles on matters relating to money in politics, its uses and regulation. Among the books are:

Alexander, Herbert E., and Corrado, Anthony. *Financing the 1992 Election.* Armonk, New York: M.E. Sharpe, Inc., 1995.

Alexander, Herbert E., and Bauer, Monica. *Financing the 1988 Election.* Boulder, Colorado: Westview Press, 1991.

Alexander, Herbert E., and Haggerty, Brian A. *Financing the 1984 Election.* Lexington, Mass: D.C. Heath and Company, 1987.



Alexander, Herbert E. *Financing the 1980 Election.* Lexington, Mass: D. C. Heath and Company, 1983.

_____, *Financing the 1976 Election.* Washington, D.C.: Congressional Quarterly Press, 1979.

_____, *Financing the 1972 Election.* Lexington, Mass: D.C. Heath and Company, 1976.

_____, *Financing Politics: Money, Elections and Political Reform*, 4th ed. Washington, D.C.: CQ Press, 1992.

_____, *Reform & Reality: Financing State and Local Campaigns.* New York: Twentiety Century Fund Press, 1991.

Alexander, Herbert E., and Haggety, Brian A. *PACs and Parties: Relationships and Interrelationships.* Los Angeles: Citizens' Research Foundation, 1984.

Alexander, Herbert E., ed. *Political Finance.* Beverly Hills: Sage Publications, 1979.

Alexander, Herbert E., and Haggerty, Brian A. *The Federal Election Campaign Act: After a Decade of Political Reform.* Los Angeles: Citizens' Research Foundation, 1981.

Alexander, Herbert E., ed. *Campaign Money: Reform and Reality in the States.* New York: The Free Press, 1976.

_____, *Money in Politics.* Washington, D.C.: Public Affairs Press, 1972. Available from Citizens' Research Foundation.

_____, *Chasing Money in Politics*. In process. To be published by Oxford Unversity Press.

Among editing tasks and articles, he

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| wrote | "Trends in the Regulations of Political Finance," in *Analysis of Federal and State Finance Law* (1975), published by the Federal Election Commission. |
| wrote | "Making Sense About Dollars in the 1980 Presidential Campaigns," in Michael J. Malbin (ed.), *Money and Politics in the United States* (1984) |
| co-authored | "The Switch in Campaign Giving," in *Fortune*, March 1970. |
| authored | "Financing Presidential Campaigns," in Arthur M. Schlesinger, Jr. (ed.), *History of American Presidential Elections*, 1789-1968 (1971). |
| edited | *Comparative Political Finance in the 1980s*, a collection of 11 articles, of which he wrote an introductory chapter as well as a chapter about the United States; published by Cambridge University Press (1989). |
| co-edited | *Comparative Political Finance Among the Democracies* (with Rei Shiratori), a collection of 13 articles, of which he co- |



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| | wrote an introductory chapter and he wrote a chapter on the United States; published by Westview Press (1994). |
| edited | "Political Finance; Reform and Reality," *The Annals*, May 1976. |
| wrote | "A Way to Clean Up State Politics," *Reader's Digest*, July 1974. |
| wrote | "Can a Candidate Buy His Way Into Office.?" *TV Guide*, June 7, 1980. |
| was | a regular columnist in *Campaigns & Elections*, write "FEC Update" in each issue, 1981-86. |

Dr. Alexander was chairman of the Research Committee on Political Finance and Political Corruption of the International Political Science Association from 1973 to 1994. He has traveled abroad widely, and observed elections and lectured in many countries. In 1987, he convened two conferences on comparative political finance, one at Villa Sebelloni, Bellagio, Italy; and the other at Villa Vigoni, Loveno do Mennagio, Italy. In June 1989, he observed the Polish elections, and in May 1990, he was a member of an official election-observer team to Romania. In September 1991, he participated in a Symposium on Election Reform in Buenos Aires, Argentina; he participated in another one on constitutional reform in Buenos Aires in 1993. He has made a number of tours for the United States Information Agency in various countries.

In 1991, he wrote a paper, "The Regulation of Election Finance in the United States and Proposals for

Reform," for the Canadian Royal Commission on Electoral Reform and Party Financing. He also participated in several of the Commission's conferences.

Among other lectures, he gave one, "Election Reform and National Politics," at the Smithsonian Institution in April 1980, and another, "The Greening of American Politics, at the John F. Kennedy Library in Boston in October 1990. Others have been given at universities, colleges, research organizations and before membership groups.

Dr. Alexander has testified scores of times before committees of the Congress, state legislatures, commissions and other government bodies.

He has made scores of appearances on television and radio, including every major network. He is frequently quoted in daily newspapers and in periodicals. He has written numerous Op-Ed articles in major newspapers.

In 1996, he received the Samuel J. Eldersveld Career Achievement Award from the Political Organizations and Parties Section of the American Political Science Association, for a lifetime of outstanding scholarly and professional contributions in the field.

In 1996-97, he chaired the Task Force on Campaign Finance Reform, a group of nine political scientists who issued *New Realties, New Thinking: Report of the Task Force on Campaign Finance Reform.*

June 1997



**EXHIBIT B**

**POLITICAL PARTY ASSISTANCE TO FEDERAL CANDIDATES 1995-96 ELECTION CYCLE**
**(in millions)**

**Political Parties**

| | |
|---|---|
| Contributions | $5.9 |
| Coordinated expenditures | 53.6 |
| Independent expenditures | 11.5 |
| TOTAL | $71.0 |

*Source*: Federal Election Commission press release, "FEC Reports Major Increase in Party Activity for 1995-96," March 19, 1997.

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**PAC ASSISTANCE TO FEDERAL CANDIDATES 1995-96 ELECTION CYCLE**
**(in millions)**

**Political Action Committees**

| | |
|---|---|
| Contributions | $203.9 |
| Independent expenditures | 10.6 |
| Candidates running in future years | 13.9 |
| | $ 228.4 |

*Source:* Federal Election Commission press release, "PAC Activity Increases in 1995-96 Election Cycle," April 22, 1997.



## EXHIBIT C

### TABLE 7: SOURCES OF FUNDS, MAJOR PARTY PRESIDENTIAL CANDIDATES, 1996 GENERAL ELECTION (in millions)

| Sources of Funds | | Clinton | Dole |
|---|---|---|---|
| Limited campaign funds | | | |
| Candidate controlled | | | |
| | Federal grant | $61.8 | $61.8 |
| | National party | 6.7 | 11.7 |
| Unlimited campaign funds | | | |
| Candidate may coordinate | | | |
| | Party soft money | 53.9 | 47.8 |
| | Labor, Corporate/ association | 20.0 | 2.0 |
| | Compliance | 8.0 | 6.0 |
| Independent candidate | | | |
| | Independent expenditures | 1.0 | 1.0 |
| Total | | $151.4 | $130.3 |

*Source:* Data provided by the Citizens' Research Foundation, based on Federal Election Commission and other data.

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO

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Civil Action No. 89-N-1159

FEDERAL ELECTION COMMISSION, PLAINTIFF

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE, ET AL., DEFENDANTS

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[Filed: ____, ____]

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**AFFIDAVIT OF DONALD K. BAIN**

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DONALD K. BAIN, the affiant , being first duly sworn, deposes and says :

1. My name is Donald K. Bain. I am chairman of the Colorado Republican Federal Campaign Committee (Party), and have held that position since March, 1993. I have been involved in Colorado politics since the late1950's and have held numerous positions from block worker to state party chairman. I am of legal age and competent to testify.

2. I have read the First Amended Counterclaim that the Party intends to file in its lawsuit against the FEC and I verify the factual statements made therein.



3. In particular, I attest that the Party was, is, and for the foreseeable future will be ready, willing, and able to spend more in working with our candidates to support their candidacies than the pennies per voter allowed by the Federal Election Campaign Act (FECA). However, although we believe that the FECA limits on our coordinated spending are invalid, the Party is reluctant to exceed them and incur the risk of sanctions. Thus, we have been forced to forego political speech and association with our candidates that we believe to be constitutionally protected.

4. At one point during the 1996 campaign, a coordinated effort with one of our candidates seemed to be so necessary that we seriously considered the possibility of spending in excess of the FECA limits, reporting the expenditures (as we always do), and defending any FEC action on the grounds that the limits violate the First Amendment. Our candidate advised, however, that he was unwilling to cooperate in campaign activity that the FEC was certain to challenge. Accordingly, because of the FECA limits, the Party refrained from political speech that we considered urgently important.

5. The ability to make independent expenditures in support of our candidates, while welcome, is no substitute for the right to coordinate our political speech with our candidates and disseminate efficiently our common messages. We can be far more efficient, and our communications can be more focused, understandable, and effective if the Party and its candidates can work together.

6. Moreover, uncertainty as to what the FEC will regard as coordinated and the difficulties and burdens of refuting charges of coordination interfere with the

internal affairs of the Party. We exist in large part to support our candidates. We need to understand what help our candidates need and to assist in developing programs to best communicate our common views. It is very awkward for us, at the same time, to be worrying about how to preserve and prove our independence with respect to programs we pursue in support of our candidates. Inevitably, both some otherwise permissible independent speech and some coordinated speech are chilled and avoided.

7. My reference to difficulties of proof is deliberate. Complaints to the FEC have become commonplace in federal campaigns, and they can be damaging, both politically and financially. They must be defended, but the cost of proving you are right can, in itself, be serious punishment. As a result, whenever legal standards or factual situations are unclear, the Party has a strong incentive to steer clear and much permissible speech is deterred.

8. My experience has been that political campaigns are fluid and fast paced. Any rules must be clear and simple and depend on easily established objective facts. Otherwise, the result will be either self censorship, as the Party and its candidates avoid potential controversy at the expense of foregoing lawful but ambiguous activity, or extensive and burdensome litigation that eats up Party resources intended for political association and speech, not for lawyers.

I swear under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.



Executed in Denver, Colorado, this 22 day of November, 1996.

/s/ DONALD K. BAIN
DONALD K. BAIN

STATE OF COLORADO

ss.

CITY AND COUNTY OF DENVER

Subscribed and sworn to before me this 22 day of November, 1996.

Witness my hand and official seal.

My commission expires August 31, 1998.

/s/ JOANE LYNES
Notary Public



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

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Civil Action No. 89 N 1159

FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANT

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE, *ET AL.*, DEFENDANTS/COUNTER-PLAINTIFFS

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[Filed: Apr. 21, 1997]

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**Declaration of Leon G. Billings**

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1. My name is Leon G. Billings. From March 1982 until mid 1983 I was the Executive Director of the Democratic Senatorial Campaign Committee (DSCC). Sen. Wendell Ford was the Chairman of the DSCC at that time, and Sen. Alan Cranston chaired the Senate Democratic Leadership Circle (DLC), which was the major fundraising arm of the DSCC.

2. The DLC was created after the Democrats lost the Senate in 1980. Sen. Cranston controlled the fundraising for the DLC, and he had a separate staff person running that operation. However, the DLC did not determine how the money was spent. That was left to the DSCC.

3. The DSCC had a three-Member Executive Committee comprised of Sen. Ford. Sen. Cranston, and Sen. Bill Bradley. They basically made the decisions as to how to distribute the money, although there was also a larger committee that met occasionally to provide direction.

4. The DLC Leadership Circle bank account was a separate account. Funds would be transferred from that account to the DSCC account, which then made the funds available for the candidates.

5. To the best of my recollection, in 1982, the DSCC had $1.2 million to distribute. That seems like a paltry sum today, but there were a number of small, competitive races where the DSCC was able to make the maximum coordinated expenditure permitted under 2 U.S.C. § 441a(d). I think this was around $67,000. We were not able to spend the maximum amount in California, for example, where the limit was $500,000. We tended to focus our resources on Senators in tighter races, but another decisive factor was the extent to which incumbents helped raise money for the DSCC.

6. Sen. Cranston was far and away the best fundraiser the Democrats had. He had absolutely no reservations about asking for money. Sen. Cranston also enlisted the assistance of other key incumbent Senators who were in a position to raise money. By and large he focused on Senators running for reelection in that cycle. Other Senators had different styles, and used different approaches to fundraising.



7. My understanding was that Sens. Kennedy, Jackson, and Metzenbaum all had unwritten commitments from the DSCC that they would get back as much as they raised as a way to encourage Senators to raise money for the party.

8. Senators solicited a coterie of rich Democrats who traditionally have provided much of the Party's support. The DLC membership was $15,000, so one hundred DLC members would contribute $1.5 million. Sen. Cranston's goal was to have two DLC members in every State, and he came very close to that goal. He kept a list of contributors and would keep after Senators who had not yet recruited two members from their states.

9. The DLC sponsored elaborate events and forums where DLC members could socialize with other contributors and party leaders. Even though $15,000 does not seem like much today, this was enough to gain admission to these exclusive events in 1982.

10. The Senators who solicited the money for the DSCC could not promise that the money would be used directly in support of their own or another particular campaign, because earmarking contributions was prohibited. However, that did not mean that Senators who raised money could not be assured that they would get a significant return from their efforts. There appeared to be an understanding between the DSCC and the Senators that the amount of money they

received from the DSCC was related to how much they raised for the Committee.

11. The DSCC also raised money on its own behalf. Sen. Ford and I took whirlwind trips to relatively small fundraising events, in the $15,000-$25,000 range. We also hosted events at the Democratic Party's mid-term Convention; and the DSCC started a direct mail campaign during my time as Executive Director.

12. People often contribute to party committees because they have given the maximum amount to a candidate, and want to help the candidate indirectly by contributing to the party. The DSCC was able to provide substantial indirect support to Senatorial campaigns. For example, we did polling, and made the results available to the campaigns. We also made in kind contributions under the § 441a(d) limits. The DSCC made the decision as to how much a particular campaign was going to get, but the individual campaigns decided how it would be used.

13. In my view, contributions help contributors gain access, have their phone calls taken. And access can influence action, since the totality of the information a Member has is significantly prejudiced by the people who have access. A Member can feel guilty about taking money from those whose positions they rarely support.

14. I never called a Senator's office on behalf of a contributor's position. However, I once had a contributor ask me to set up an appointment with a Senator. I did pave the way by calling the Senator's Administrative Assistant to say, if it was convenient, this person would be calling for an appointment. When the



contributor called again with the same request, I turned him down.

15. There has to be some way of controlling distribution of the time available to talk to people, and priorities are more likely to be given both to calls where a Senator is soliciting money, or is talking to those who have contributed. That is what is wrong with the system today: the amount of time Senators spend talking to people they want to contribute, and talking to people who have already contributed, seeking additional contributions.

16. The DSCC and the state party committees have separate coordinated expenditure limits under § 441a(d). My recollection is that we sent a letter to each state party committee saying we planned to spend their share, and they should notify us if that was not acceptable. I think one state party resisted until it became clear to them that if they did not authorize the DSCC to spend their share, the state party would have to raise and spend this amount. Once the state party understood this, they agreed to let the DSCC spend the state share. I believe we had the Democratic National Committee (DNC) transfer their § 441a(d) authority to us, as well.

17 I started a candidate retreat, at which campaign strategists, pollsters, media experts and election analysts provided a two-day intensive course on fundraising, campaigning, selecting consultants and so forth. We had lists of Democratic political consultants and pollsters they might consider, and we also warned campaigns not to hire those who played both sides of the aisle.

18. While we welcomed calls from all our candidates, we spent nearly all our time working with non-incumbents. Incumbents rarely sought our advice, and often rejected it when we offered.

19. Taking away the limits on coordinated expenditures would result in a fundamental transferal of power to certain individual Senators. In that situation, it would behoove the leadership to raise and control as much money as possible.

20. As I understand it, the national campaign committees now send competent, qualified campaign coordinators into the various States to help candidates, particularly non-incumbents. If the limits on coordinated expenditures are removed, a party committee would be able tell a candidate, "We are going to give you $2 million or $4 million for your Senate race. We are also going to tell you who is going to staff your Senate race. We are going to tell you what to say and what to do. We are going to take control." This would have enormous political and policy implications.

21. Most Senators and Senate candidates have a political philosophy that is unlikely to change dramatically. However, their views on some issues may not be as well established, so this is where money can have a major impact. Contacts from contributors can determine whether a Senator takes an active role on a particular issue, or declines to take an active role.

22. This was readily apparent to me in my work in the 1970s, when I worked with Sen. Edmund Muskie on environmental legislation. When working with 400 or 2,000 page bills, it was commonplace for Members to try



to make what seem to be minor changes that in fact benefit their natural constituency enormously.

23. To the extent that this is corruption, it has always been part of our process. Daniel Webster used to sell votes. This is not going to change. What is going to change, if you have unlimited party expenditures, is that party leaders will be able to say who gets nominated and who gets elected. While I am not sure that the party leaders who control this process would be more beholden to their contributors than is now the case, their power to make things happen would increase.

24. The argument I have always made in favor of Political Action Committees is that you diversify the corruption. Is it better to have a Senator responding to 400 different political action committees with diverse political interests? Or to have one party committee responding only to the party leadership? It scares me to think that you can go out and find a lackey and tell that lackey you are going to give him or her $4 million, which he or she will use to defeat a much better candidate who is still running an old fashioned campaign, and will not accept a $4 million contribution. This would be a very different political environment, with less representation of constituents than is now the case.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ LEON G. BILLINGS
LEON G. BILLINGS

Executed on this 15 day of April, 1997.

Statement of Anthony Corrado

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## Statement of Anthony Corrado

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Political parties are essential to the vitality of American democracy. They serve a unique and crucial role in our political system, a role so important that virtually all political scientists and most learned observers would agree with the conclusion drawn over a half-century ago by the noted scholar E. E. Schattschneider that "modern democracy is unthinkable save in terms of the parties" (1942: 1). Party organizations serve as the principal intermediaries between the citizenry and government. They organize large numbers of individuals and political groups into collectives of active political participants, and combine the diverse and diffuse views of individual members into broad-based expressions of political speech. In doing so, they help to translate the needs and desires of the general public into political positions and public policies that form the basis of civic debate and government action.

Parties seek to communicate their views and coalesce diverse interests behind policy positions predominantly through electoral activity. Party organizations concentrate a substantial share of their resources and activities on political campaigning. They play a central role in recruiting candidates, raising campaign funds, communicating information to voters, and encouraging citizens to vote. They develop messages and platforms designed to appeal to broad-based majorities in an effort to win elections and build legislative majorities. These messages provide voters with outlooks that help them comprehend the choices available and structure their decisionmaking. In particular, the parties provide

citizens, especially those who identify themselves as party supporters, with perceptual frameworks and voting cues that help them assess candidates and issues.

Traditionally, parties have also assumed the major responsibility for raising the monies needed to finance election-related activities and candidate campaigns. For most of our history, campaign financing was essentially party financing, since party organizations were responsible for nominating candidates at all levels of government and conducting campaigns on their behalf. For the most part, party committees raised the money and paid for election-related expenses; candidates did not establish their own private campaign organizations or run separate financial operations.

This system of campaign financing changed dramatically in the decades after World War II. The widespread growth of individual candidate campaign organizations and the consequent decline in the role of party organizations led to the development of candidate-based politics in which individual candidates raised their own campaign monies. Party organizations thus became secondary institutions in political finance. While they continued to provide direct assistance to candidates, they were more important as financiers of general party communications and issues development, as well as such crucial party-building and voter participation efforts as grass-roots organizational activity and voter turnout programs.

By the time Congress adopted the Federal Election Campaign Act (FECA) in 1974, the vast majority of political scientists and many journalists were already warning of the need to strengthen political parties. But



the Congress was more concerned with controlling rising campaign costs and equalizing the resources available to candidates. It is also a body of incumbents, who were more interested in establishing methods of candidate-based financing that have benefitted incumbents. As a result, the FECA established a regulatory approach that further reduced the potential influence of party organizations. The law limited party contributions to federal candidates, and placed severe restrictions on the amounts they could spend in coordination with these candidates. It also prohibited party committees from spending money independently on behalf of federal candidates. It therefore reduced the ability of party organizations to finance candidate-related activity, and constrained the role of these committees in communicating directly with the electorate.

In this statement I will examine the role of party funding in the political system, especially the issues raised by the FECA limits on party expenditures. As noted by the Supreme Court in its recent decision in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, the regulations currently imposed on party financial activity raise important First Amendment issues regarding political speech. The rules also raise a number of practical or policy concerns with respect to the ability of political parties to share their views effectively with the electorate and assist party members in their campaigns for elective office. This statement seeks to address these issues by reviewing the characteristics of party organizations and the forms of political party finance, the purpose and role of party expenditures, the question of whether party expenditures can be corruptive of

the political process, and the efficacy of regulatory alternatives with respect to party political speech.

## I. The Characteristics of Political Parties

### A. Political Parties and Their Roles: An Overview

Political parties are unique institutions in American politics. They are best conceptualized as organized groups with broad-based public memberships that consist of three interrelated social structures: (1) the party organization, which consists of the formal and informal leaders and activists who operate largely through formal party structures, ranging from the national party committees to local precinct committees; (2) the party in government, which consists of the elected and appointed officials who seek government office under the party label, and once in government articulate and work to advance party goals and positions; and (3) the party in the electorate, which consists of those citizens who demonstrate some degree of loyalty to a party, agree with its philosophy and goals, tend to vote habitually for party candidates, and constitute the greater part of a party's political coalition.

This general description of political parties reflects the different purposes parties serve in democratic governance. The chief function parties perform is to contest elections. While other organized interests, such as political action committees and labor unions, support candidates, raise funds, broadcast advertisements, and work to turn out the vote, no other organization plays so central a role in our electoral system as the political party. The preeminent purpose of any party organization is to win elections. To this end, parties run candidates for office, develop campaign messages, raise



funds, conduct polls, provide technical assistance to candidate campaigns, recruit grass-roots volunteers, and work to target and identify party voters and turn them out to vote for party candidates. Their goal in winning elections is to build legislative majorities and help to organize government so that voter preferences can be translated more effectively into government action.

In order to successfully contest elections, parties must appeal to a broad range of interests in society. Given the size of the electorate and the large legislative districts that characterize federal and statewide elections, parties can attract the support needed to win only by building extensive coalitions of diverse interests. Parties therefore unify a wide array of individuals and interest groups in a meaningful way. They work to resolve differences between organized interests or large blocs of voters, and to advance compromise positions that will benefit the party's common goals. Parties thus serve as a unifying force in the pluralistic and at times fragmented civil society in which we live.

The primary way parties generate support is by promoting political discussion and encouraging the development of majority views on public policy issues. In their effort to attract supporters, party organizations express their positions on major policy issues and develop platforms. These platforms often set forth broad agendas for future government action, such as the Democrats' "Great Society" or the Republicans' recent "Contract with America." These party views clarify the choices voters face and help voters make informed decisions. They provide party candidates with common themes and policies that can serve as the

basis for their election campaigns. They serve as the basis for the party's legislative priorities in government. And they help to frame political thinking in a way that makes the ensuing civic debate more accessible and understandable to party supporters.

This role of parties offers a futher benefit: it enhances the accountability and responsibility of the political system. By providing voters with clear choices, parties and their candidates assume a collective obligation to fulfill their commitments to their supporters. Citizens can hold party leaders and officeholders accountable for party views; they know whom to praise or blame for any related government actions. If the party leaders fail to pursue the policies they advocate, they risk losing political support. Parties therefore have a strong incentive to uphold their responsibilities to the electorate.

Parties also serve an important socialization role. That is, they educate citizens about the political process and policy issues, and encourage individuals to participate in the process. Parties advocate political views that voters, or future voters, may adopt in developing their own individual political values and preferences. They thus constitute a means by which individuals can come to understand political activity, comprehend the meaning of political symbols and issue controversies, and learn the value of political action. Party organizations also promote various forms of participation: they give individuals an effective and efficient way to join with others for political action, to contribute time and resources to political campaigns, and otherwise become involved in shared exercises in political speech and electioneering.



Finally, parties help to unify our highly fragmented system of government. Political power is divided between federal, state, and local levels of authority, and is further subdivided by the separation of powers within each level of government, as well as by the diverse constituencies governments seek to serve. Parties work to overcome this decentralized distribution of authority by relying on shared symbols, traditions, and policy positions to create common bonds and perspectives that are shared by party members and elected officials at all levels of government. This common framework generates centripetal force in the political system, which, while not always successful, can produce the cohesion of interests and the legislative majorities that are needed for government to fulfill its purposes. Parties therefore are an essential means of making government more effective.

### B. Distinguishing Parties from Other Organized Groups

Political parties are not unique in their desire to mobilize supporters to influence election outcomes or the behavior of those who hold public office. Indeed, most organized groups, especially the larger national political action committees (PACs) or institutions such as corporations or labor unions, have similar objectives with respect to their political activities. In recent years, large PACs and interest groups such as the AFL-CIO have engaged in many of the electoral activities that have traditionally been associated with party committees. For example, PACs and other organized interests raise political money, make contributions to candidates, sponsor independent advertisements that seek to influence election outcomes, and work to

mobilize supporters and encourage them to vote. But despite these common activities, parties remain substantially different from other political groups, and these differences must be respected.

Although organized interest groups and political parties are both engaged in election-related activity, they do not pursue the same objectives in electoral politics. While the general purposes of these disparate types of organizations may coincide and even be comparable at times, a fundamental distinction remains. As one scholar of party organizations has noted:

> Parties run candidates for office and seek control in order to organize the governing process. The parties stand for certain principles, but they use these principles chiefly as a means to attract adherents. Interest groups, contrarily, became involved in the electoral arena *only* to forward their policy preferences. Put simply, rather than taking positions to attract followers, they support candidates who support their positions—or oppose candidates who do not favor their positions. (Maisel, 1987:93, emphasis in original)

Accordingly, most PACs and interest groups exhibit bipartisan behavior. Since they are most concerned with advancing their narrow interest, they provide support to candidates who share their views, regardless of party affiliation. They also tend to favor incumbent legislators over challengers, since incumbents are already in a position to help them with their particular cause.

While parties represent broad interests and diverse coalitions, PACs and other organized political groups



usually represent a single interest or a narrow range of interests. These groups exist primarily to advance a particular view or single legislative goal; their mission is primarily to encourage some government action that will provide the group and its members with a specific economic or other material benefit. In the pursuit of their specific interest, they use a variety of means ranging from public demonstrations and collective bargaining to candidate contributions and direct lobbying of Congress.

Traditionally, these non-party groups have largely relied on their lobbying of legislators and, to a lesser extent, their lobbying of administration officials to achieve their ends. Only after their lobbying role was firmly established did these groups become involved in the electoral process in a meaningful way. Yet, even today, electoral campaigning remains only one of their activities, while, it is still the primary activity of party organizations. An organized political group thus differs from a party in that it maintains some sphere of nonpolitical action and turns to political or electoral action "when political avenues appear to be the best or the only means to achieve its goals" (Beck and Sorauf, 1992:19).

These differences between organized interests and party organizations are especially pronounced in regard to corporations and labor unions. These institutions exist for the economic benefit of their members; their major goal is to help their members materially and economically. Moreover, they have directly benefited from provisions of federal and state law that grant these institutions special privileges and protections, which provide them with economic advantages and are

essential to their ability to amass large aggregations of wealth. Consequently, for most of this century, corporations and labor unions have not been allowed to use their treasury funds in connection with federal election activities, nor may they make direct contributions to federal candidates. Such participation in federal elections is prohibited, since it raises the possibility that these organizations could leverage their economic success in the marketplace into political influence that could be used to secure quid pro quos from legislators or otherwise unduly influence government action. In contrast, party organizations do not own independent economic enterprises or seek to generate wealth from commercial activities. In fact, federal regulations specifically prohibit parties from using commercial means to finance their political activities (11 CFR §100.7[a]).

Another important difference between parties and other political groups is that parties play a fundamental role in the organization of elections. Most states include party signs or symbols on their ballots and arrange ballots based on party affiliation. State laws often give party members a voice in the selection of their party's candidate in direct primaries. In many states, party members also help select local party leaders, such as precinct workers or ward chairs. Party members are therefore more than a group of citizens to be recruited and mobilized on Election Day; they have a recognized status under law that is not shared by other organized political groups.

Finally, for a majority of the electorate, parties serve as important voting cues or symbols. The party affiliation of a candidate is the chief cue on which voters rely when making decisions about candidates or issues.



In this way, parties play a meaningful role in helping voters relate their own values and goals to the options offered in each election. No other organized group in American politics has so effective or extensive an influence in helping to structure electoral decisionmaking. This distinction is in large part a result of the historic and enduring role of political parties. Unlike many PACs or political groups, the major parties have exhibited uncommon stability and endurance. Parties therefore serve as reliable reference points that have stood the test of time, and thus provide form and continuity in the national issue debates and the choices citizens face with each new election.

## II. National Political Party Finance

Federal campaign finance laws cover various sources of contributions and different types of spending. In general, the law places limits on the amounts individuals, PACs, political committees, and party committees can contribute to federal candidates, and prohibits corporations and labor unions from giving to federal candidates altogether. The law, however, does not limit most forms of political spending. Candidates can spend unlimited amounts from their personal wealth, and candidate campaign committees are allowed to spend unlimited amounts (except in the case of presidential candidates who accept public financing and thereby accept expenditure caps as a qualifying condition for the public money). PACs are free to spend whatever funds they raise (although any expenditures made on behalf of a candidate, unless they are made independently of the candidate, count as in-kind contributions that are subject to limits). Labor unions and corporations can spend freely to communicate political

information to their members, conduct non-partisan voter mobilization efforts, or make independent expenditures for or against federal candidates.

The federal regulations governing political party finance differ substantially from those applicable to other political committees or sources of funding. As in the case of other contributions to federal candidates, the law sets strict limits on the contributions made and received by political party committees in connection with federal elections. It further limits the amounts parties may spend on behalf of their candidates. But the regulations also acknowledge the distinctive nature of party organizations by setting forth a number of detailed provisions that recognize the close affiliation between a party and its candidates, and the parties' traditional role as organizations devoted to encouraging voter participation. It is therefore appropriate to review the different types of party finance, and to clarify the differences between party coordinated spending and other forms of party spending.

A. Contribution Limits

Under the FECA, national party organizations can receive annual contributions of no more than $20,000 from an individual and $15,000 from a PAC. Any contribution from an individual, however, is subject to the annual limit of $25,000 that is imposed on an individual's aggregate donations to all federal candidates and national party committees, including the national party organizations (Democratic National Committee and Republican National Committee) and the senatorial and congressional campaign committees (National Republican Senatorial Committee, Democratic Senatorial Campaign Committee, National Republican Congressional



Committee, and Democratic Congressional Campaign Committee). The law also prohibits party committees from accepting corporate or labor union contributions to pay for any activities conducted in connection with federal elections.

In addition to restricting contributions *to* party organizations, the law also restricts contributions or other forms of direct assistance *from* party organizations. With respect to direct contributions, each national, congressional, and state party campaign committee can give $5,000 to a House candidate at each stage of the election process, including a primary, runoff, and general election. So the maximum amount that may be contributed, assuming a runoff election in addition to a primary and general election, is $15,000. The parties' national and senatorial campaign committees can give slightly more, a combined total of $17,500, in an election cycle to a Senate candidate. State party committees can contribute an additional $5,000 to a Senate candidate. None of these limits are adjusted for inflation.

B. Coordinated Expenditures (§441a[d])

Parties are also allowed to spend money *on behalf of* individual candidates. These outlays, which are authorized under 2 U.S.C. §441a(d), are commonly known as "coordinated expenditures" because they can be made in direct coordination with a federal candidate or his or her campaign committee. As with direct party contributions to a federal candidate, coordinated expenditures can be made only from funds received under federal contribution limits. These expenditures differ from campaign contributions in that both the party and the candidate share control of them, giving the party

some influence over how these monies are spent. Unlike direct contributions, which are usually monetary donations to a candidate, coordinated expenditures generally take the form of some kind of campaign service paid for by the party, such as polls, television commercials, radio ads, direct mailings, or issue research. Coordinated spending also differs from direct party contributions in that such expenditures can be made only in connection with a federal candidate's general election campaign. While the parties may spend money on behalf of a candidate before the general election period, any monies spent earlier in the election cycle count against the general election limit—there is no separate limit for each stage of the election as is the case with party contributions.

The FECA strictly limits the amount a party committee may spend in coordination with a federal candidate. These ceilings are based on formulas established for each type of election at the federal level. Under the original terms set forth in 1974, national party committees could spend up to $10,000 per candidate in a House general election campaign, except in those states with only one congressional district, in which case the limit was $20,000. In Senate general elections, the limit was the greater amount of $20,000 or two cents times the state's voting-age population, while the presidential election ceiling was simply two cents times the voting age population, or approximately $2.9 million in 1974. Each of these limits was indexed for inflation, so they have increased with each new election cycle. By 1996, they were roughly three times their original amounts: national party committees could spend $12.3 million on behalf of a presidential candidate, or $30,910 for a House candidate ($61,820 in a single-district state), and



from $61,820 in the smallest states, to $1.4 million in California on behalf of a Senate candidate.

State party committees are allowed to spend the same coordinated amounts in House and Senate races as the national party organizations. They are not allowed to spend coordinated amounts on the presidential race. Moreover, the "state" party limit is actually the limit for state *and* local party organizations in a state; the law makes no separate provision for spending by county or local party organizations. But since all state party committees can be considered affiliated committees of the national party organizations, a state party may assign their spending authority to a national party committee, thus in effect doubling the amount a national party committee can spend. These assignments, known as "agency agreements," effectively allow a national party committee to spend the total amount allowed the national and state and local party committees in a particular House or Senate race.

C. Generic Grass-Roots Party Activity and Nonfederal Funding (§431[8][B] and §431[9][B])

The limits on party coordinated spending were first put into effect in the 1976 elections, and questions about the legal status of different types of party funding immediately arose. Traditionally, party organizations had spent significant sums in each election cycle on activities such as grass-roots volunteer organization, voter identification efforts, get-out-the-vote programs, generic party advertising (messages like "Vote Democratic" or "Support Republican Candidates"), and the production of bumper stickers, buttons, and slate cards that might *indirectly benefit* federal candidates, but did not constitute direct assistance to a particular can-

didate. Under the 1974 FECA's original provisions, the costs of many of these activities could be considered in-kind campaign contributions subject to the law. This was especially true of grass-roots campaign materials such as bumper stickers, lawn signs, and slate cards that mentioned particular federal candidates in a listing of party candidates for federal, state, or local office. Party leaders became particularly concerned about materials that included the party's presidential ticket, since the public financing program established by the FECA prevented the parties' nominees from raising additional campaign contributions for the general election period. The FECA therefore had the effect of chilling traditional grass-roots and party-building activities, and reducing the role of party organizations in electoral politics.

In response to these concerns about the diminished role of party organizations, Congress amended the FECA in 1979. In an effort to strengthen political parties and promote grass-roots political activity, the Congress accepted a recommendation made by the Federal Election Commission to ease the restrictions placed on party contributions and expenditures. These provisions, which are codified in §431 of the Act, exempted a narrow set of clearly defined volunteer and grass-roots party building activities from the definitions of "contribution" and "expenditure" set forth in the Act, so that parties could now spend unlimited amounts on voter registration and identification, certain types of campaign material (such as slate cards), and voter turnout programs, without violating the limits imposed on party contributions and expenditures made in connection with a federal election.



This exemption for party-building activities was further expanded by the FEC in a series of advisory opinion rulings, beginning with Advisory Opinion 1978-10, that permitted party committees to allocate the costs of grass-roots party activities in ways that reflected the proportion of federal and nonfederal candidates on the ballot. These rulings allowed national party committees to pay for the federal share of their administrative costs, voter mobilization program costs, and other costs subject to §431 with federally regulated funds, while the nonfederal share (the proportion representing state and local candidates) could be financed with contributions permitted under the relevant state law. The FEC thus allowed national party committees to raise contributions in amounts and from sources that were not permitted under federal contribution limits, since most state laws were more permissive than federal law with respect to contribution limits. This nonfederal funding came to be known as "soft money" in modern campaign finance parlance, since it was not subject to the "hard" contribution limits established by the FECA.

Generic party-building expenditures, or soft money financing (to use the popular terminology), is therefore clearly distinguishable from the party coordinated spending that occurs under §441a(d). Direct contributions to federal candidates or for coordinated expenditures under §441 must be paid for with federally regulated funds—no soft money is allowed. Coordinated expenditures under §441 can be made on behalf of a particular federal candidate; most party expenditures under §431 cannot be made on behalf of a particular federal candidate (the statute does allow mailings or

phone banks conducted by volunteers to advocate the election of a specific candidate).

Thus, the primary purpose for which soft money is used, other than general overhead and administrative expenses and related fundraising costs, is to conduct voter identification and turnout drives that are jointly sponsored by state and local party organizations. These voter mobilization drives are commonly called "coordinated campaigns" since they seek to coordinate the activities of party organizations and candidates to conduct one, centralized party voter turnout program. Instead of having the state committee, local committee, federal candidates, statewide candidates, and local candidates spend funds separately for voter identification and turnout, the party organizations develop one centralized voter turnout effort to mobilize party supporters. This approach reduces the amount of overlap, represents a more efficient use of funds, and reduces the costs incurred by individual candidate campaigns for voter identification and turnout. Such "coordinated campaigns," however, are not to be confused with coordinated expenditures made by party organizations on behalf of specific federal candidates under §441a(d).

In 1996, both national parties also spent a significant amount of soft money for the first time on issue advocacy ads and other communications designed to promote party issue positions. This was the first election cycle in which such communications were a focus of soft money spending. These communications, which did not expressly advocate the election or defeat of particular federal candidates, were used to spread messages regarding the parties' perspectives on the Administration's health care proposal, the 1995 federal



budget debate, President Clinton's first term record, and issues related to the 1996 congressional races. This use of soft money, which has been a source of controversy, is one way parties communicate their views, but it is important to note that it is not related to any coordinated spending done by the parties.

D. Independent Expenditures

Federal regulations adopted under the FECA have always recognized the unique relationship and close affiliation between political parties and their candidates. Accordingly, federal regulations have prohibited national and state party committees from making independent expenditures in connection with the general election campaigns of federal candidates (11 CFR §110.7). But the Supreme Court's 1996 ruling in *Colorado Republican Federal Campaign Committee v. FEC* (116 S. Ct. 2309) concluded that political parties can make independent expenditures on behalf of candidates in congressional races in accordance with their First Amendment right of free speech. Consequently, party senatorial campaign committees and some state party committees established legally separate political operations during the general election campaign period to make independent expenditures, mostly on behalf of Senate candidates. Overall, these committees combined to spend $11.5 million on independent expenditures during the short period available to them before the 1996 elections were held.

As this brief review demonstrates, the rules governing political party financial activity are complex. Because parties are involved in almost every aspect of the elections process and share a unique association with federal candidates, the rules must make provision

for different types of activity to accommodate the parties' diverse functions. It is therefore important, when speaking about party finance, to distinguish the type of funding involved and the particular issues associated with that form of funding.

## III. The Role of Party Coordinated Expenditures

In *Colorado Republican Federal Campaign Committee v. FEC*, the Court expressed specific interest in party coordinated expenditures and in the question of whether it is constitutionally permissible to limit such spending. This question is best answered by first examining how parties spend funds in coordination with federal candidates, and summarizing the effects of these expenditures in federal contests.

As noted in the review of party financing above, coordinated expenditures are the only form of party spending limited under the FECA. These ceilings were established in 1974, when the FECA established a regulatory regime that limited all forms of political spending in an effort to curb rising campaign costs and equalize the resources available to candidates. These limits on party spending ensured that the ceilings placed on candidate spending would be effective.

In 1976, the Supreme Court's decision in *Buckley v. Valeo* struck down most of the spending limits that the party coordinated spending limits were designed to support. The Court ruled that limits on congressional campaign spending were unconstitutional, since they limited political speech without serving the compelling state interest of preventing corruption or the appearance of corruption. On the same grounds, the Court overruled the limits that had been set on independent



expenditures and on the right of a candidate to spend personal funds on his or her own campaign for federal office. However, the limits the FECA imposed on party coordinated expenditures were not challenged in this case. They therefore remained in effect after the *Buckley* decision, even though there was no evidence to suggest that these limits were needed to protect the integrity of the electoral process. The result was an imbalance in the campaign finance system—while wealthy candidates using their own resources could spend unlimited amounts on their campaigns, and well-financed incumbents could spend unlimited amounts, and PACs and other groups or individuals could spend unlimited amounts independently in federal elections, party committees were restricted in the amounts they could spend to assist their candidates.

Not only did Congress limit the amounts parties could spend in coordination with their candidates, but they also set the ceilings at unrealistically low levels. The ceilings were not designed to ensure effective or meaningful political communication. They were set at levels—2 cents times the voting-age population with adjustments for inflation—that virtually guaranteed that any communication with party members on behalf of candidates would be severely limited. At this level of funding, party committees could not afford to pay the postage on one letter to each eligible voter in a district or state, never mind the cost of the stationary and printing needed to produce the letter. In fact, the limits were so low that a party committee could not even send a letter to each party supporter in a state or district; that is, it could not pay to send one letter to its own members. In contrast, congressional incumbents in 1974 were spending $30.5 million posting franked mail

to constituents at an average cost of about 10 cents per piece of mail. By 1988, congressional incumbents were spending about $82.2 million on franked mail, at an average mailing expense of about 14 cents. The coordinated spending allowed party organizations, however, had only increased to about 5 cents for each person of voting age.

The coordinated spending limits are particularly restrictive because they are adjusted only for inflation and voting-age population. Neither of these measures adequately represents the real changes in the costs of campaigns. The costs of campaign services and communications, such as polling, television advertising, direct mail services, and travel expenses, have increased at a rate significantly greater than the Consumer Price Index, which is used to adjust party spending limits. For example, between 1976 and 1980, the Consumer Price Index rose about 40 percent, but the cost of such basic items as mass mailings, television commercials, and air travel grew by 50, 100, and 300 percent. Between 1976 and 1982, the McCann-Erickson index to media advertising costs, which includes all advertising mediums, rose at a rate that was 14 percent greater than inflation. Such increases led FEC Commissioner Lee Ann Elliott to observe in 1992 that "in truth, campaign costs don't go up at marketbasket inflation; instead of going up about four or five percent every year, they go up *ten*, *twelve*, *fifteen* percent every year" (Elliott, 1992:302, emphasis in original).

As for voting-age population, this adjustment is only applied to a party's spending limit in senate elections and those states with a single congressional district. As noted above (see section II.b), congressional races in



multi-district states are subject to a limit originally set at $10,000, which is only adjusted for inflation, even though the mean population of a congressional district has grown from approximately 470,000 when the FECA was adopted to more than 572,000 in 1990. This disparity in the treatment of congressional district spending limits has created significant variations in the amounts a party may spend in different congressional districts. For example, between 1976 and 1996 the amount a party committee could spend in most congressional districts (those in multi-district states) rose to an inflation-adjusted $30,910, with no accommodation for the average growth in a district's size. In a single-district state like Wyoming, however, a party could spend up to $61,820, the same amount that could be spent on behalf of a senate candidate, or more than twice the amount permitted in other congressional districts. Thus, in 1996, a party could spend no more than $30,910 to help a congressional candidate in New York, where congressional districts have an average voting-age population of 438,700, but could spend $61,820 to help a candidate in Wyoming, where the voting-age population totals approximately 344,000. The formula for determining party spending limits also creates inequities between single-district states. For example, in 1996, a party could spend the same amount in Wyoming and Montana, even though Montana's voting-age population (634,000) is almost twice as large.

Despite the constraints imposed by the inadequacies of the limits, party organizations recognize the value of coordinated spending and devote significant sums of money to this activity. On average, since 1986, the Democrats have dedicated about 13 percent of their total federal spending to coordinated spending. The

Republicans, who in recent elections have raised about twice as much federal money as the Democrats, have disbursed about 9 percent of their total federal spending in a coordinated manner. Since 1990, the Democratic and Republican parties have each spent at least $20 million to $30 million per election on coordinated expenditures. This represents a substantial increase from the levels of the early 1980s. For example, the Democrats spent $4.9 million on coordinated expenditures in 1980 and $3.3 million in 1982; the Republicans spent $12.4 million and $14.3 million, respectively. By contrast, the major parties spend only 1-2 percent of their federal funds on direct contributions to candidates, or an average in recent elections of $2 million to $3.5 million per election. (For a summary of national party federal financial activity, see Table 1.)

Generally, the four national congressional committees or "Hill committees" (the Democratic Senatorial Campaign Committee [DSCC], Democratic Congressional Campaign Committee [DCCC], National Republican Senatorial Committee [NRSC], and National Republican Congressional Committee [NRCC]) take the lead in working with state party committees to effectuate coordinated expenditures made in connection with congressional elections. The national and state party committees work together to determine how best to allocate their resources to provide the greatest benefit to their candidates. In some instances, the national committees work with state organizations to combine their spending authority; in other cases, they offer guidance to state parties engaged in their own activities.



As noted in Table 3, coordinated expenditures are a major activity of national and state and local party committees in both the Democratic and Republican parties. The total amounts spent on such activity have increased substantially in recent election cycles, with the largest share financed by the national party committees. While they lack the resources available to their national counterparts, state and local parties also play an important role in effectuating coordinated activity. These committees have spent significant sums on coordinated expenditures, especially when considered in relation to their total election-related spending. They have also demonstrated a growing capacity to assist their candidates in this way, as indicated by the increasingly large sums devoted to such spending in the last three election cycles. In the 1992 and 1994 election cycles, Republican state committees spent an average of $1 million on behalf of federal candidates, while Democratic committees spent an average of over $1.4 million.

The hard monies that are used for coordinated expenditures are generated through ongoing fundraising operations that include direct mail solicitations, telemarketing efforts, party fundraisers, an annual congressional dinner, and the solicitation of individual donors. The vast majority of the monies used for coordinated expenditures are generated through contributions of relatively small amounts from individual donors. In fact, most of the hard money raised by party committees for use in connection with federal elections is received in contributions that fall far below the maximum allowable amounts. Because party contributions are subject to the annual aggregate $25,000 ceiling on individual giving, very few donors give

amounts that are even close to the legal maximum. Of the more than one million individuals who donate money to national party committees each election cycle, there are probably fewer than a thousand donors, both parties included, who give anywhere near the maximum individual contribution of $20,000 in any given election cycle. State and local party committees are subject to even smaller hard money contribution limits. These committees may accept no more than $5,000 total from an individual for activities conducted on behalf of federal candidates.

Decisions about coordinated spending are made by party leaders and staff members, working in conjunction with candidates. The chairs, vice chairs, and members of the Hill committees are members of Congress who are selected by their colleagues in the House and Senate. In addition, the committees have full-time staffs: in 1996, the DSCC had 38 staff members, the NRCC and DCCC 64 each, and the NRSC 150. The elected members of the committee essentially act as a board of directors, establishing priorities and assisting in the recruitment of candidates, fundraising, and other activities. The staff members oversee the daily operations and play a major role in formulating party strategies and implementing those strategies.

The administrative apparatus needed to effectuate coordinated expenditures is therefore very expensive to operate. During the 1996 election cycle, roughly 50 percent of the DCCC's funds and 45 percent of the DSCC's monies were used to finance staff salaries, computers, media studios, voter lists, fundraising programs, loan repayments, and other overhead costs. The NRCC and NRSC spent even more on these activities,



committing approximately 55 percent and 48 percent of their funds to them.

A. Enhancing Electoral Competition

The national party Hill committees have a common overriding goal: they seek to maximize the number of seats their party holds in Congress. Party leaders and committee staffs therefore try to make the most efficient and effective use of their available resources to win elections. While the membership of these committees would suggest that they would favor incumbents in distributing their resources, since the members are sitting members of the House and Senate, the reality is just the opposite. Instead of focusing on incumbents, party committees focus on candidates in close contests or marginal districts where party assistance might make a difference in whether the party candidate wins or loses the election. They also concentrate on challengers who can wage competitive campaigns against an entrenched incumbents of the opposite party. However, federal law hamstrings these efforts.

Party resources are not a major source of funding for incumbents. The bulk of party contributions and expenditures are devoted to candidates for open seats (races where an incumbent is not seeking reelection or loses a primary election and its therefore not a candidate in the general election), and challengers who are running in competitive contests or who might become competitive with party assistance. Sometimes the parties do provide some assistance to incumbents because they have the resources available to do so. For example, in 1984 the NRCC had sufficient funds to give all of its incumbents the maximum legal direct con-

tribution, regardless of the competitiveness of their contests. In recent elections, the NRSC has usually given the maximum legal contribution to all of its candidates, and the DSCC has given the maximum to most of its candidates because they had the resources to do so. But in most of these instances, the party organizations did not provide incumbents with further assistance by making significant coordinated expenditures on their behalf.

National political and economic conditions can also dictate a slightly greater distribution of resources to incumbents. According to Paul Herrnson, an authority on party spending in congressional elections, when national conditions do not favor the president's party, the in-party committees take a more "defensive" posture towards incumbents, and the out-party committees use more of their resources to help non-incumbents. When national conditions favor the president's party, the patterns are reversed, with the in-party committees giving more to non-incumbents and the out-party spending more to support incumbents. But even when parties support incumbents, it usually helps mainly those who are in jeopardy of losing their seats (Herrnson, 1995:81).

That party committees focus their spending on non-incumbents who most need their support can be determined by examining the disclosure reports on coordinated spending issued by the Federal Election Commission. In order to determine the amounts of money given by the parties to different types of candidates (incumbents, challengers, or those seeking open seats), I aggregated the amounts spent by committees of each major party in coordination with the general



election candidates in House and Senate contests during the 1996 general election, as disclosed in the itemized candidate-by-candidate listing released by the Federal Election Commission in its March 1997 press release on party spending. (See Federal Election Commission 1997a, pages 12-34.) I then determined the total and average amounts spent by each party on behalf of incumbents, challengers, and open seat candidates in each type of federal election (House, Senate, or President). The results of this analysis follow.

While there are times when an incumbent in a safe seat may receive party resources, these candidates account for relatively little of the coordinated spending done by party committees on behalf of their candidates. The majority of coordinated expenditures are made to help non-incumbents. Indeed, the general spending patterns that characterized the 1996 election cycle are fairly typical of the patterns evident in recent years (see Table 4).

Overall, Democratic party committees disbursed more than $22 million on coordinated expenditures in the 1996 election cycle, as compared to more than $30 million for the Republicans. The Democrats spent $6.7 million in coordination with their presidential candidate, $8.6 million in coordination with 28 Senate candidates, and $7 million in coordination with 316 House candidates. The Republicans spent $11.7 million in coordination with their presidential candidate, around $11 million in 32 Senate races, and about $8 million in 156 House races.

In both parties in 1996, the majority of party coordinated expenditures were made on behalf of non-incumbents. The Democrats devoted 85 percent of

their total coordinated expenditures in Senate races to challengers (31 percent) and open seat candidates (54 percent). In House races, 80 percent was spent on behalf of non-incumbents, with challengers (56 percent) receiving more than twice the share that went to open seat candidates (24 percent). Almost all of the money spent on behalf of incumbents—15 percent in Senate races and 20 percent in House races—went to incumbents who were in jeopardy of losing their seats.

The average dollar amounts spent by Democratic party committees on behalf of candidates also significantly favored non-incumbents. In House races, party coordinated spending averaged $39, 852 on behalf of open seat candidates, $26,065 on behalf of challengers, and $11,595 on behalf of incumbents. In Senate races, open seats received an average of $357,117 in spending, challengers $263,880 in spending, and incumbents $266,116. Spending on behalf of senate incumbents was slightly higher than the average spent on challengers due to the small number of incumbents seeking reelection, all of whom were involved in highly competitive contests.

The Republicans' coordinated activity also favored non-incumbents. The Republican committees, however, spent more than the Democrats defending incumbents because of the unusually large number of incumbents involved in close races, especially among the large freshman class in the House, most of whom won in 1994 with 55 percent of the vote or less. Even with this unusually large number of threatened incumbents, the Senate and House committees each disbursed close to two-thirds of their coordinated funds on races involving non-incumbents. In Senate races, 63 percent of



coordinated expenditures were made on behalf of non-incumbents, with challengers receiving 21 percent of the total amount expended and open seat candidates, 42 percent. In the House elections, where 63 percent of the funds also went to non-incumbents, challengers received 34 percent of the coordinated money, while open seat candidates received 29 percent.

The average dollar amounts spent on behalf of candidates by Republican party committees were more balanced than the comparable sums for Democrats, but still favored non-incumbents, albeit only by small differences in some instances. In House races, Republican committee disbursed an average of $56,030 on behalf of candidates in open seat races, $52,683 for challengers, and $47,017 for incumbents. In Senate races, open seat spending once again led the way, with these candidates receiving an average of $359,874, as compared to $335,758 for challengers and $335,289 for incumbents.

The 1996 allocations are similar to those in previous cycles. In 1992, for example, national party committees allocated a majority of their funds to non-incumbents. The Democratic committees allocated 76 percent of the monies spent on Senate races to challengers (47 percent) and open seat candidates (29 percent), while 56 percent of the funds disbursed in connection with House races went to challengers (36 percent) and open seat candidates (20 percent). On the Republican side, 53 percent of the monies allocated for Senate races went to challengers (24 percent) and open seat candidates (29 percent), while 75 percent of the monies disbursed in connection with House races went to challengers (44 percent) and open seat candidates (31 percent) (See

Herrnson, 1995:86, figures include contributions and coordinated expenditures).

That most of the monies spent in coordination with candidates are targeted on non-incumbents and close races makes sense, given the purpose these party funds serve in the electoral process. Party committees rely on their coordinated expenditures to help the maximum number of candidates win election. That is, they disburse these funds in an effort to help their candidates, especially challengers, gain access to the resources they need to wage succesful campaigns. Party funding thus helps to make elections more competitive. It enhances the ability of non-incumbents to contest elections, increase their name recognition, and make their views known to the electorate. In this way, parties help to improve the choices available to electorate and enhance the vitality of the electoral process.

Party coordinated expenditures are especially important because parties are the only source of funding that mostly benefits non-incumbents. As political scientists have noted for years, one of the major problems in the campaign finance system is the inability of challengers to raise the monies needed to wage viable campaigns. For challengers who are not wealthy and capable of financing a campaign from their personal resources, there are only three sources of campaign funding available to them under the FECA: contributions from individuals, donations from PACs, or money from political parties. Most of the individual gifts go to incumbents, who have well-established donor bases and the advantage of incumbency. And the vast majority of PAC contributions also go to incumbents. In fact, in recent elections, PACs have given an average of more



than 70 percent of their campaign contributions to incumbents, as opposed to only 10-15 percent to challengers (the balance, about 18 percent, goes to open seat races). In 1996, for example, PACs gave $146.4 million to incumbents, compared to $31.6 million to their challengers. In 1994, the difference was $137.2 million to $19 million; in 1992, $135.3 million to $22.9 million; and in 1990, $125.8 million to $16.2 million.

Challengers therefore look to party committees for assistance in overcoming the significant financial disadvantages they experience in most elections. Party money is the only major source of funds in the political system that challengers can rely on to help counter the overwhelming resource advantage incumbents enjoy as a result of their greater success in fundraising, especially in soliciting PAC contributions. It also helps to counter the advantage incumbents enjoy as a result of the privileges that accompany their position in government, such as the franking privilege .

The problem facing parties, however, is that under the current campaign finance laws, they are strictly limited in the amount they can spend in coordination with their candidates. As a result, although they can provide some assistance to party candidates challenging incumbents, they cannot hope to match the advantages incumbents receive from PACs. For example, in 1996, PACs gave an average of over $950,000 to Senate incumbents, more than three times the average amount they gave Senate challengers, and far more than the average amount spent by party committees on challengers' behalf. PACs gave an average of close to $300,000 to House incumbents, which was more than five times the amount given challengers and approxi-

mately five times more than the amount that national and state parties *combined* were legally allowed to spend ($61,820) on behalf of their challengers.

The current limits on party expenditures thus reduce the level of electoral competition by constraining parties in their ability to make their candidates more competitive. In many instances, parties would be willing to spend more to assist their candidates, but are prevented from doing so because of federal ceilings. In 1996, for example, the Democratic and Republican congressional campaign committees essentially spent the maximum allowable coordinated amount—$61,820 total for party committees at all levels of government—in approximately 150 House races. That is, the committees spent 95 percent or more of the limit in races involving 103 non-incumbents, including 60 candidates challenging incumbents, and 44 incumbents. All of these incumbents were involved in close races; all except for two (Republicans Hilleary of Tennessee and Christensen of Nebraska, who finished with 58 and 56 percent of the general election vote, respectively) received 55 percent of the vote or less in the general election.

The limits had an even greater effect in restraining spending in Senate races. In 1996, there were 68 major party candidates seeking election for 34 seats. Of these 68 candidates, party committees disbursed the maximum amount in coordinated expenditures, in 41 cases, or 60 percent. Republican committees reached the limit in 25 races involving 12 open seat candidates, 5 challengers, and 8 incumbents. Democrats reached the limit in 16 races involving 10 open seat candidates, 5 challengers, and 1 incumbent. That the party committees are more apt to reach the limit in Senate races is understandable, since in most instances the quality of the candidates who seek election to the Senate tends to make these highly competitive races. Moreover, in these races candidates need to communicate their views with statewide electorates, rather than the voters in a single congressional district, and given the costs of communicating with such a large audience, taken together with the inadequacy of the coordinated spending limits with respect to the real costs of campaigning, it is not surprising that the ceiling is quickly achieved in most cases.



B. Facilitating Political Speech

How do parties disburse the monies they are allowed to spend in coordination with candidates under §441a(d)? In what specific ways do they seek to help their candidates?

Party committees offer candidates a wide range of election-related services, including organizational consulting, issue research, polling, mail services, and media production and advertising assistance. Generally, party committee leaders and staff members work with candidates and their campaign staffs to provide them with the resources and type of assistance they need most. That is, the party works with each candidate to determine how coordinated funds can best be spent to improve that candidate's prospect of winning election. Parties therefore pay for different campaign services on behalf of different candidates, depending on a candidate's particular situation and needs. But what candidates need most, especially non-incumbents, is help in broadcasting their message and communicating

their views so that they are known by the voters who will cast ballots on Election Day.

Party coordinated funding is used almost exclusively to help candidates communicate more effectively with the public. Parties and candidates both know that voter communication is the key to winning elections. Candidates must develop a message that is meaningful to voters and have the resources needed to present that message to the electorate. To have their voices heard in modern election campaigns, candidates rely on television or radio advertising, or direct mail, the latter being the preferred medium for many congressional candidates, since broadcast vehicles like television or radio usually have audiences that span more than one congressional district and are therefore less efficient and more costly means of communicating than targeted mail to likely voters. But all of these methods of communicating are expensive, particularly given the fact that Senate and congressional candidates must disseminate their views on a number of different issues during the course of a campaign.

Non-incumbents, particularly challengers running against well-known incumbents, often find it difficult to raise the funds needed to make their views known to the electorate and gain the name recognition among the voters that is required for a viable or winning campaign. Party organizations therefore try as much as possible to promote their candidates' views and enhance their ability to speak with voters. In doing so, a party fulfills one of its principle objectives, since the main way a party's ideology and policy perspectives become known to the electorate, and thus the primary way it generates public support, is through the speech



of its candidates. Parties therefore have a keen interest in promoting the widespread airing of their candidates' views.

The national party committees assist candidates with campaign communications in a number of ways. The predominant approach is to provide candidates with the funding needed to broadcast their messages or post letters to selected voters within their districts. But this is not the only means by which party committees support their candidates' speech. Both the DCCC and the NRCC have state-of-the-art television and radio production facilities on their premises, which are used to give candidates technical and editorial assistance in producing television and radio ads. The committees also have satellite capabilities that allow candidates to beam television communications back to their districts and interact "live" with voters.

One way the parties use these facilities is to produce "generic" ads each election cycle that include general party messages and themes, which can be customized for particular candidates by incorporating a candidate's name, picture, and voice. These generic ads are normally used by challengers who lack the resources to hire a media consulting firm or hope to reduce their media production costs by using one of these party ads.

Candidates can also use the party media production facilities to make ads for themselves. Both congressional committees have staff members available to offer technical and editorial advice, particularly guidance in identifying major themes, drafting scripts, and producing ads. The senate committees, the DSCC and NRSC, take a less active role in developing candidate communications, since senate candidates usually have the

experience and funding needed to develop public relations strategies, in addition to media consultants who handle most of their ad production. However, these committees still play a role in their candidates' campaign communications. The NSRC provides its clientele with radio actuality services that enable candidates to record a campaign message that local stations can access by dialing a toll-free number. The NRSC and DSCC also sponsor Internet sites that distribute general information about their Senate contenders.

The extent to which party committees assist candidates with their campaign speech and the emphasis placed on promoting candidate views when allocating coordinated expenditures under §441a(d) can be determined by examining the disclosure reports filed by the party committees and reported by the Federal Election Commission. Under federal disclosure requirements, each party committee must provide an itemized listing of its coordinated expenditures, noting the candidate on whose behalf an expenditure is made, the payee, the amount, and the purpose of the expenditure. These itemized disbursements are reported in the monthly reports filed by the party committees on Schedule F and line 25 of the committees' summary reports. By reviewing each of these expenditures, the amounts spent on media, mail, research, polling, and other particulars can be easily determined.

Parties use their coordinated expenditures under §441a(d) to help their candidates communicate with voters. Over 90 percent of the monies spent by national party committees on behalf of their candidates is spent on political communication. And most of the other 10 percent is spent on issues research and polling, which is



used to help candidates develop and target their campaign messages. So this spending is also directly related to political communication.

For example, in 1992 the NRCC and the Republican National Committee (RNC) spent a combined total of almost $6 million in coordination with Republican House candidates. Of this total, at least $5.5 million, or over 91 percent, was spent to help candidates share their views with the voters, either by supporting broadcast via electronic media or by paying the costs of direct mail. The NRCC distributed roughly $1.7 million in electronic media services (television and radio) to Republican House candidates, while the Republican National Committee (RNC) spent an additional $613,000. The NRCC produced 188 television advertisements for 45 candidates, 23 of whom were incumbents and 22 challenger or open seat candidates. Two-thirds of these ads were created specifically for individual candidates, with the remainder consisting of generic party ads that were customized for individual candidates. The committee also produced radio ads for 45 House members and 44 nonincumbents. In addition, the party spent $3.2 million on direct mail advertising in coordination with candidates.

The DCCC distributed approximately $4.1 million in §441a(d) funds to its 1992 candidates, approximately 94 percent of which was used for candidate communications. The committee disbursed roughly $3.2 million worth of television and radio services to a large number of candidates. Over 170 House members and 70 nonincumbents used the Democrats' Harriman Communications Center to record and edit their television commercials. Others used the committee's facilities to

record radio advertisements. In addition, the Democrats provided their candidates with $725,000 in direct mail services.

The Senate committees spent significantly more than House committees on behalf of their 1992 candidates, but the shares devoted to direct candidate communications were roughly the same, with at least 9 out of every 10 dollars spent in coordination with a candidate being used to distribute candidate messages to the voters. The DSCC disbursed $9.6 million of its $11.2 million in total coordinated spending on electronic media services for Democratic candidates. It spent an additional $390,000 on direct mail services for Senate candidates. The NRSC dedicated almost 97 percent of its §441a(d) spending to direct candidate communications. It disbursed nearly $15 million of its $16.5 million in coordinated expenditures to television and radio advertising for Senate candidates, and another $1.1 million on direct mail.

Similar patterns characterized the parties' coordinated expenditure distributions in 1996. The NRCC, for example, spent a total of $7.3 million. Of this amount, approximately 99 percent was spent on media, mail, and telephone services used to help candidates communicate with voters. The committee disbursed approximately $4.2 million on media services. It spent an additional $3 million on direct mail, and over $150,000 on telephone communications. The DSCC spent about $8.4 million on behalf of Democratic Senate candidates, 90 percent of which was used for media advertising and mail. The Democrats spent $7 million on media advertising, and almost $500,000 on mail. Most of the remaining funds were used for polling.



The major exception to the general pattern of recent elections was the allocation of resources by the DCCC in 1996. This committee spent $7 million on behalf of congressional candidates, with 70 percent of this amount dedicated to direct candidate communications and the remaining share spent almost exclusively on polling and issues research. The DCCC spent almost $4.4 million on media services. The committee gave virtually every Democratic House candidate $20,000 in credits that could be redeemed at its Harriman Communications Center, and its staff estimated that roughly 70 percent of their candidates redeemed them. The party committee also produced 12 different generic ads that were essentially used by non-incumbents who could not afford to hire a media consultant. The DCCC also spent $512,000 on mail and telephone services.

The reason why the Democrats disbursed a smaller, although still very significant, share of their coordinated expenditures on direct candidate communications is because they spent a substantial amount on issues research and polling to help their candidates develop their messages. As the minority party in Congress, the Democrats fielded a larger number of challengers, many of whom faced first-term incumbents who had received less than 55 percent of the vote in 1994. The Democrats therefore spent over 20 percent of their coordinated monies working with candidates to provide them with issues research, voting record information, and polling data to help them define the major issues in the race and identify messages that could be used to frame their candidacies. Much of this money was disbursed in the summer and early September, when many challengers were organizing their general election campaigns.

Candidates, especially non-incumbents, place great value on coordinated party funding, since it gives them opportunities to spread their message that they would not be able to afford otherwise. But the limits on party spending make it impossible for these committees to pay for a very extensive or intensive amount of campaign speech. While the parties spend substantial sums on coordinated expenditures under §441a(d), almost all of which goes toward political communications, the assistance they provide to individual candidates is relatively minor. As noted earlier, even if a party takes advantage of bulk mail and reduced postal rates, and spends the maximum amount allowed the national and state and local committees in a given congressional district, the party can at best pay the postage for one mailing to a targeted group of voters within a district. It is not allowed to pay the production expenses and mailing costs of just one letter to the voters in a district.

Nor can the party finance a significant amount of media broadcast time. Generally, the 441a(d) limits prevent the parties from purchasing the broadcast time needed to air more than one or two ads effectively on a statewide basis. For example, in 1996, the national party organizations were allowed to spend $168,707 in South Carolina under the §441a(d) ceiling. The estimated cost to air one thirty-second campaign ad in South Carolina on a statewide basis with enough frequency that it would penetrate the viewing audience and have its message understood by voters was approximately $186,000. Similarly, in Georgia, the estimated cost of a statewide media buy for one ad was $280,000 and the state spending limit was $326,224; in Colorado, $123,750 against a limit of $170,932; and in



Massachusetts, over $250,000 against a limit of $286,968. Party committees are therefore usually forced to be selective in financing candidate advertising, paying for the purchase of time only in selected markets and for short periods of time. Often they must decide whether to finance early media broadcasts in hopes of giving a candidate, especially nonincumbents, a boost by providing some early voter attention and momentum. Or they must choose an alternative strategy and finance some late media broadcasts in the final week or two of a campaign in hopes of giving candidates greater visibility in the crucial final stages of an election. Given the constraints of the law, parties usually cannot do both.

The limits on party coordinated spending thus force candidates and parties alike to rely on other sources of revenue to finance their campaigns. These limits make PAC money more attractive to candidates, since candidates can receive as much PAC money as they can raise, although they can take no more than $10,000 ($5,000 in the primary election and $5,000 in the general election) from any one PAC. These limits also place many candidates at a serious competitive disadvantage, especially challengers facing a well-financed incumbent or a candidate facing a wealthy opponent who is financing his or her campaign from unlimited personal funds, since they cannot look to the party for the supplemental assistance they may need to communicate effectively with voters in a campaign environment in which they are being outspent significantly by their well-financed opponent.

The limit on party spending also forces party committees to seek alternative means of assisting can-

didates in races where the coordinated spending limit has already been reached. One means available is to increase the amount spent in a district or state under §431 of the Act. This would allow parties to spend monies on voter turnout and general party campaign materials such as slate cards and sample ballots, but this is an inferior means of communicating with voters as compared to direct advocacy of a candidate through broadcast advertising or broad-based mailings. Moreover, any spending under §431 can be financed in part with soft money funds that are not subject to federal contribution limits. The choice of this alternative would thus encourage parties to raise more soft money, which is subject to less effective disclosure and no contribution limits.

The other alternative available to parties would be to shift the allocation of their hard money resources from coordinated expenditures made in concert with their candidates to independent expenditures made without any coordination with their candidates. But this too is a less desirable alternative. As discussed in the next section, this alternative would allow parties to freely advocate the election or defeat of particular candidates, but only at the cost of increased party fundraising demands, a weakening of the link between parties and their candidates, and the possibility of voter confusion and a reduced level of accountability in the political system.

C. Coordinated Expenditures versus Independent Expenditures

The Supreme Court's 1996 ruling in *Colorado Republican Federal Campaign Committee v. Federal Election Commission* has offered political parties an alternative means of communicating with the electorate about their candidates: they can spend money independently. Under the Court's ruling, parties can make independent expenditures without having these disbursements count against federal contribution limits or coordinated spending ceilings. Parties can therefore avoid the restrictions imposed on coordinated spending by spending monies independently in support of their candidates. By undertaking independent expenditures, parties can expressly advocate the election of their candidates for federal office and freely communicate with the electorate without restrictions on their right to free speech. But this approach constitutes a much less effective means of communicating with voters, and it would increase the fundraising demands on party organizations, while at the same time reducing the level of accountability and responsiveness in the electoral process.



In 1996, the parties responded to the Supreme Court's ruling by making independent expenditures in federal election contests for the first time. Prior to the Court's ruling, federal campaign finance regulations had prevented parties from spending funds independently of their candidates to expressly advocate their election or the defeat of their opponents. Questions concerning the legal procedures and arrangements needed to make independent expenditures in the absence of promulgated regulations led the parties to proceed with caution in 1996. In fact, the Democrats spent most of August and September seeking clarification of the law, and therefore did not establish an independent expenditures operation until the final weeks of the campaign. However, despite the uncertainty and short time period available between the issuing of the

Court's opinion and Election Day, the parties still managed to spend $11.5 million independently, with the Republicans spending $10 million as compared to $1.5 million for the Democrats.

In 1996, almost all of the monies spent independently by party committees were spent in Senate races, primarily open seat races in which the party had already spent the maximum legal amount in coordinated spending. Of the $11.5 million total for both parties, over $8.3 million was spent in Senate open seat contests and only about $118,000 was spent in House races. Given the unrealistically low ceilings on coordinated spending and the large number of races in which parties reach the limit, it is likely that parties will allocate an increasing amount of money to independent expenditure efforts in the future. And in pursuing this option, it is inevitable that candidates and parties alike will face legal a range of legal questions that will have to be resolved.

The problem with independent expenditures is that they are less efficient and effective than coordinated expenditures as a means of communicating with voters. First, in order to ensure that any independent expenditures made by a party are independent of other party activities, party organizations in 1996 each established a legally separate entity that was solely responsible for making independent expenditures. Each party had to rent and furnish an office, hire staff, and pay other administrative costs. They had to engage additional consulting services, and duplicate many of the functions already being undertaken by other party offices. The parties therefore had to go through a cumbersome, complicated, and time-consuming procedure in order to



communicate their views. They also had to incur significant additional administrative and overhead expenses in order to pursue their right to free speech. While specific estimates on the costs incurred in 1996 are not readily available, the administrative and overhead expenses associated with a separate party committee operation are substantial. As noted earlier (section III), the national party committees' Hill committees spend an average of 45 to 50 percent of their budgets on administrative and overhead expenses.

Second, independent expenditures do not qualify for the lowest unit rates on the purchase of broadcasting time. Party coordinated expenditures do. Consequently, parties must spend more, in most cases almost twice as much more, for the same ad or message if it is financed independently instead of in a coordinated manner as allowed under §441a(d). Parties therefore have to spend more money for the same quantity of speech when they are speaking independently. A regulatory structure that encourages party committees to engage in independent expenditures thus increases the fundraising burdens on parties, since it puts them in a position where they have to spend more money to communicate with voters than they would if their speech was considered a coordinated expenditure.

Third, when spending money independently, parties are required to separate themselves from their candidates, at least with respect to any election activity associated with the independent expenditures. This is a less efficient and effective means of communicating with the electorate than under §441a(d). The best way for a party to help a candidate communicate with voters and develop an effective message is to work together in

a coordinated manner. Such collaboration is not allowed with independent expenditures.

A shift towards independent expenditures would be particularly undesirable because independent spending reduces the level of accountability in the system and is confusing to voters. Independent expenditures must be made without any coordination with candidates. The candidates they are intended to help, therefore, do not have to assume any responsibility for them. This is particularly true in the case of independent expenditures made against an opposing candidate. For example, if the Democratic party sponsors a message or ad against a Republican candidate that is not accurate or is controversial, the Democratic candidate can disavow association with the ad, claiming that he or she had no knowledge of the ad and therefore is not accountable for it. Such arguments, while based on legal reality, are confusing to voters, who view candidates as intimately connected with their parties, and don't understand the legal distinctions between coordinated ads, independent ads, and candidate-sponsored ads. With coordinated expenditures, party spending is more closely related to the candidates who benefit from the activity, and the coordination between the party and candidates makes it easier to hold candidates responsible for any spending.

Coordinated spending therefore reflects a relationship between party and candidate that fits more closely with the way voters think about the election process. Electoral regulations should promote this relationship between parties and candidates, because it is a meaningful one for voters. Even though the share of the electorate that identifies with a political party has



declined in recent years, party identification is still the most important factor in helping voters shape their views of candidates. Party identification is a cue that helps voters distinguish candidates, frame policy choices, and make decisions on Election Day. Thus, by strengthening the ties between parties and candidates, campaign finance regulations can help improve the accountability of the electoral process and make it easier for voters to hold parties and candidates responsible for their views.

Independent expenditures are thus a less effective vehicle for party communications than coordinated expenditures, and are an inferior policy alternative. While the independent expenditure alternative allows parties to circumvent the limitations of §441a(d) and freely communicate with voters, it weakens the ties between a party and its candidates, and increase the fundraising demands party organizations must face. Further, independent expenditures raise the possibility of presenting the electorate with confusing messages about the relations between a party and its candidates, and threaten to reduce the level of accountability and responsibility achievable through the ballot box. Instead of promoting independent expenditures, the campaign finance system should encourage interaction between a party and its candidates by allowing parties to freely spend money on behalf of its party members who are seeking elective office.

## IV. Party Coordinated Expenditures and the First Amendment

So political parties spend money on behalf of their candidates in an effort to help these candidates win elections, which is the principal goal of party organiza-

tions in undertaking election-related activity. Because they are most interested in winning elections, parties spend these funds to help candidates gain voter support. They are especially interested in making incumbents in close races and non-incumbents more competitive, so that these party members will have a better chance of winning those contests that usually determine which party will constitute the majority in Congress. They pursue this end by helping communicate candidates' views to the electorate, in the belief that more effective and extensive communication will make voters more aware of a candidates' attributes and policy positions, and thus increase the share of the electorate willing to support those party members who are seeking elective office. Party expenditures on behalf of candidates are therefore an essential form of political speech. They are the preeminent means by which parties inform the electorate about their candidates seeking office, and they are a vital resource for challengers, who often lack the funds needed to communicate effectively in their campaigns against well-known and well-financed incumbents.

By prohibiting party organizations from spending more than a few cents per voter on behalf of their candidates, the FECA's §441a(d) raises basic First Amendment concerns. This ceiling limits political speech because it severely restricts the amount of money parties may spend on behalf of their candidates. As the Supreme Court concluded in its *Buckley* decision, a limit on the amount an individual or group can spend on political speech is no different from limiting political speech itself: "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the



quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached" (*Buckley v. Valeo*, 424 U.S. 19).

The limit on party coordinated spending particularly undermines First Amendment protections because these funds are the principal means by which parties expressly advocate the election or defeat of particular candidates. The general party funding provided under §431 in most cases cannot be used for this purpose. Moreover, the restrictions on spending under §441a(d) are so low that they do not allow many issues to be discussed or much depth of exploration. Indeed, the limits do not even allow the parties to conduct a mailing to all party members or conduct ad campaigns on a number of different issues. The ceilings thus impair the associational rights of party members because party organizations are not allowed to communicate freely with their members, a right that is granted to PAC members, labor union members, corporations, and other political groups under §431 of the FECA. The ceilings also impair the associational rights of party members by restricting the amount of speech they can jointly express to the public at large on behalf of their candidates. Since such speech is an essential means by which parties recruit new members and support, the limit also infringes on a party's ability to attract new supporters.

The Supreme Court has been very clear in setting a standard for judging such restrictions on political speech. Since its ruling in *Buckley*, the Court has held that preventing corruption or the appearance of corruption are the only legitimate and compelling state

interests that justify restrictions on campaign finance. This standard has been upheld in all of the subsequent cases involving campaign spending restrictions that have come before the Court in the two decades since the *Buckley* opinion was issued. On this basis, the Court has struck down limits on the expenditure of personal funds by candidates seeking federal office, except in the case of presidential candidates receiving public funding; on the amount of campaign funds spent by congressional candidates; and on the amount of money spent independently by individuals, PACs, and other political groups.

My understanding of the purposes of the FECA, based on my reading of the legislative history of the statute, is that the limitations on party spending under §441a(d) were not established to prevent corruption or the appearance of corruption in the electoral process. That purpose was served by the contribution limits placed on the funds parties could spend in connection with a federal election, as well as by the strict disclosure requirements imposed on party funding generally, and on party coordinated finances in particular. Instead, party spending was limited because Congress in the 1974 FECA was trying to control rising campaign costs and equalize the amounts candidates could spent on their campaigns for federal office. Congress recognized the close relationship between a party and its candidates, and understood that parties might spend money on behalf of their candidates to supplement the limited amounts the candidates themselves could spend. Congress therefore limited the amounts parties could spend on behalf of their candidates so that party spending would not become a means of circumventing the restraints imposed on candidate spending. Accord-



ing to the Court's ruling in *Buckley* and subsequent cases, the purpose these limits are designed to serve—to equalize the resources available to candidates and control campaign spending—do not constitute a compelling interest that justifies restrictions on political speech.

Moreover, a limit on the amounts parties spend on behalf of their candidates is not needed to prevent corruption or the appearance of corruption, because party coordinated expenditures are not corruptive nor do they create the appearance of corruption in the electoral process. Unlike PACs and other political groups, parties represent broad interests and diverse coalitions. Parties accumulate large numbers of contributions from a wide array of donors and interests, and pool these donations into a common fund that is used to finance all activities in connection with federal elections. Parties thus diffuse any real or perceived undue influence that might arise from any particular contribution.

Indeed, a party's membership and contributor base is so extensive that it cannot be controlled by any particular interest. Nor would a party even seek to be controlled by a few particular interests. The strength of a party organization depends on its ability to attract broad support among the electorate, an ability which would be hindered by adopting the perspectives of a single or even handful of special interests. Parties seek to appeal to majorities and to combine different interests into powerful electoral coalitions; they do not exist to advance narrow interests and try to curry legislative favors from members of Congress. For this reason, most campaign finance experts view party

money as the cleanest source of money in American politics.

Furthermore, a party or its leadership and staff have no reason to corrupt public officials for economic benefit. As noted in the discussion of political parties in section I above, parties do not generate wealth from commercial activities or own independent financial enterprises that might benefit from particular legislative actions. Nor can they gain undue influence over government jobs or contracts, such "spoils" of the campaign finance system have long since been abolished and replaced with a civil service system, government procurement procedures, and a limited number of executive appointments that are determined by the President (in some instances with the advice and consent of the Senate), *not* by the party leadership.

For party funding to be corruptive, a two-step corruption process would have to occur. Initially, donors would have to corrupt or exert undue influence on the party organization or at least the party leadership. The parties, in turn, would have to corrupt the elected officials who represent the party in Congress and encourage them to perform quid pro quos for party donors. There is no evidence that such patterns of influence and decisionmaking take place as a result of party spending under §441a(d).

There is no academic analysis or scholarly study conducted to date that demonstrates that parties are corrupted by the federally regulated contributions, the so-called "hard money funds," they receive from donors. None of the studies of party finance or party coordinated spending contend that these funds are corruptive or generate the appearance of corruption in the political



process. Nor do these funds provide great opportunity for potential quid pro quos, since parties do not allocate these funds on the basis of a candidate's position on any particular issue.

What parties expect from their candidates is that they will run effective campaigns and support party positions once elected, so long as the party's view does not conflict with the individual's personal views or constituency interests. Party committees therefore do not allocate party funds based on some issue litmus test or by comparing a candidate's views to the views held by particular party donors. When parties are deciding whether to spend funds on behalf of a candidate, they chiefly examine the competitiveness of the district or race, the political situation of the incumbent, and the strength of the party contender's candidacy. A candidate's ideology or positions on specific issues are not criteria for selecting which candidates to support, except in the rare instance where a candidate's ideology might dramatically affect his or her competitiveness (e.g., a very liberal Democrat running in a conservative rural district with a large Republican registration advantage). And even in this rare instance, the party may decide to assist the candidate in an effort to promote the party's message in the district and thus build potential future support. But generally, the parties do not reward or punish candidates with party money in an effort to shape their beliefs. This basically "hands-off" approach with respect to a candidate's thinking is best summarized by the following comment by an NRCC official:

> At the NRCC, our only ideology is that you have a "big R" by your name. There is no litmus test on

> any issue. We ask candidates how they feel on "issue X" and "issue Y." Then, we help them articulate what they feel. We are here to help Republicans win. (Cited in Herrnson, 1995:82)

Staff members at the Democratic party committees express similar sentiments.

If party committees were trying to use their expenditures to influence legislative behavior, one would expect that a significant share of the funding would be given to incumbent Representatives and Senators. But this is not the case. As the evidence from recent election cycles indicates, by all standard measures parties provide more funding to non-incumbents than incumbents. Whether considered in terms of the number of candidates to receive party funding, the total amount spent, or the average amount spent, most party money spent in coordination with candidates goes to non-incumbents. And almost none of the money spent by party committees goes to safe incumbents; when parties do assist an incumbent, it is usually because that member is in jeopardy of losing a bid for reelection. In these cases, the parties usually give to an incumbent because that seat is needed to help build a legislative majority, not because a particular donor or member of Congress has exerted undue pressure on party decisionmakers.

Even if party leaders do try to use party funding as a means of encouraging party candidates or elected officials to support party positions, such legislative bargaining is a normal part of the coalition-building process in government. It is not a "corruptive" activity; it is not designed to give a private citizen or other entity some private advantage in exchange for a cam-



paign contribution. To argue that party leaders, by using the limited means available to them to try to encourage party members to support party positions, are engaging in corruptive quid pro quos that undermine the integrity of the political process shows little understanding of the relationships between a party and its members who hold office, and of the process of coalition-building in modern legislatures.

Parties and their candidates have a symbiotic, not corrupting, relationship. Party leaders have an interest in seeing their candidates succeed and in seeing the elected officials who sit in government under their banner serve their constituents well. Parties leaders also have an interest in trying to convince party members to support the broad positions parties advocate, since this is the way in which the parties help develop party cohesion in Congress and thereby encourage the formation of legislative majorities that are essential to the proper functioning of government. It is also a means by which a party helps fulfill the promises and preferences expressed in election campaigns, and thus upholds its responsibility to the voters who voted for its candidates.

Studies of congressional voting behavior offer no evidence that votes of members of Congress or Senators are influenced by party coordinated expenditures or other party contributions. Scholarly research indicates that the factors that generally determine voting behavior are a member's ideological predispositions and the interests of a candidate's political constituency, the voters he or she represents, not the influences of any particular campaign contribution (see, among others, Wright, 1997 and 1996; Herrnson, 1995; Grenzke, 1989;

Welch, 1982; Weisberg, 1978; Kingdon, 1973). The entreaties of party leaders or the provision or promise of party funding are certainly not important factors. Indeed, party leaders generally urge their members to support their constituent's views, even if at the expense of the party position. Paul Herrnson describes this attitude as follows: "Recognizing the primacy of the electoral connection, party leaders generally tell legislators to respond to constituents rather than 'toe the party line' when the latter could endanger their chances of reelection" (Herrnson, 1995:234). Accordingly, party leaders have not made funding contingent on a candidate's support for party positions.

While most incumbents do not receive party funding, some incumbents do help raise money for the party. As with most party fundraising, elected officials are asked from time to time to assist their party with this necessary and difficult task. Party fundraising efforts to generate the monies needed to finance coordinated expenditures thus do offer another means by which a relationship between candidates and donors might be established. But again, there is little evidence to suggest that this help in raising party funds is corruptive or influences the voting behavior of members of Congress. Most of the money raised by party committees is generated by means such as direct mail and fundraising events that do not involve direct solicitation by candidates or elected officials. The monies raised go to party financial accounts, not to the accounts of a particular candidate. Moreover, the law specifically prohibits elected officials or candidates from raising funds for the party and then earmarking them for use in connection with their own campaigns. And the data on party spending clearly show that monies received by



party committees are largely spent on non-incumbents, not on the incumbents who may be in a position to help raise monies for party activities.

Moreover, if the fundraising pressures on candidates were to be a concern, this would be another reason to question the current system of party spending limits. Because the parties are strictly limited with respect to the amounts they can spend on behalf of candidates, candidates cannot rely on party assistance to gain the resources they need to finance their campaigns. Consequently, candidates are forced to rely on their own fundraising efforts, which means that they have to spend more time raising money than they would under a system of unfettered party participation.

Finally, the law already contains sufficient safeguards to guard against any undue influence. All of the funds raised by the parties for use in connection with federal elections and all of the funds used to pay for coordinated expenditures are subject to federal contribution limits. Any individual contributions are subject to the $25,000 annual aggregate ceiling. The law prohibits the use of any labor treasury funds or corporate funds. It also prohibits candidates and elected officials from raising contributions for the party and earmarking them for use in their campaigns. All of these monies are subject to strict public disclosure requirements.

In addition, the parties must disclose all coordinated expenditures made on behalf of federal candidates. The parties must use a specific report form included in their federal disclosure reports to itemize all coordinated expenditures. For each expenditure, a party committee is required to report the name and address of the

payee; the purpose of the expenditure; the name of the candidate benefitting from the expenditure, including campaign committee address and office sought; the date of the expenditure; the amount of the expenditure; and the aggregate amount the party has spent on behalf of that candidate. The data filed on these reports is summarized by the Federal Election Commission and reported in its press releases and reports. The Commission provides both summary data on the amounts spent on behalf of House and Senate candidates by each party, as well as summaries for each candidate arranged by state and district.

## V. Conclusion

Political parties differ from PACs or other political groups because they represent broad interests and coalitions of diverse viewpoints, rather than narrow interests with particular legislative concerns. Parties are therefore a unifying force in our pluralistic political society. They are an essential means of resolving differences between organized interests and large blocs of voters, and they work to develop ideologies and policy positions that will appeal to broad segments of the populace.

Parties seek to attract supporters and expand their public appeal by promoting political discussion, developing issue platforms, and, most importantly, participating in election campaigns. Election campaigns are the primary activity of party committees. Parties recruit candidates, assist candidates in organizing their campaigns, help them develop issue positions and communicate their views to voters, and work to mobilize voter support. Parties take a great interest in helping their candidates contest elections, because candidate



speech is the principal means by which party views are disseminated to the electorate. Also, parties must win elections in order to build legislative majorities and see the policy preferences of their broad memberships translated into government action.

Parties thus play an essential role in the electoral process. They are particularly important to the vitality of our democracy because they are the only source of funding available to federal candidates that favors challengers over incumbents. Unlike PACs and other organized interest groups, which are most concerned with achieving their particular legislative goals and thus support those candidates who reflect their particular views, regardless of their party affiliation, parties are most concerned with helping their candidates run effective campaigns, irrespective of a candidate's particular issue positions or policy preferences. Consequently, PACs and other groups spend the vast majority of their political money on incumbents, while parties devote most of their resources to non-incumbents, usually spending significant amounts on incumbents only when they are in jeopardy of losing their seats. Party funding thus helps to overcome the enormous financial advantage incumbents enjoy as a result of PAC donations and the benefits that accompany their positions in government.

Political party spending therefore has a number of salutary effects on the political system. It reduces the influence of PAC or other interested money in the political system. It improves the candidate choices available to voters, enhances the level of competition in election contests, and encourages citizen participation in election campaigns. It also reduces the potential for

corruption in the system, since political parties are the cleanest source of money in the process and allocate resources without requiring candidates to take particular positions on issues. Indeed, no study of party coordinated spending has found that these monies have a corruptive effect on candidates or afford party donors undue influence in the legislative process. But these salutary effects, which primarily result from the coordinated expenditures that parties make on behalf of their candidates, are limited under current law, because the FECA strictly limits the amounts parties may spend in coordination with their candidates.

The current ceiling on party coordinated spending under §441a(d) significantly weakens the role of parties in the political systems because it severely restricts their ability to communicate freely with their membership or the public at large. The ceiling prevents party committees from working with their candidates to communicate their views to the electorate in a meaningful way. For example, the ceiling is so low that it does not allow a party committee to produce and mail just one letter to the eligible party voters in a district, nor does it allow parties to broadcast more than one or two thirty-second ads to a statewide audience. Such stringent restraints significantly impede the ability of parties to expressly advocate the election of their candidates.

The limit on party coordinated spending is particularly egregious because it serves no constitutional purpose. This statutory provision was not adopted to prevent corruption or the appearance of corruption in the political system; it was established to help cap campaign spending and equalize the resources available



to candidates—two objectives that have been overruled by the Supreme Court as justifying infringement on the right of free speech. Moreover, in the two decades since the Court established the prevention of corruption or the appearance of corruption as the only constitutional purpose for limiting political speech, no significant evidence has emerged that demonstrates that the federally-regulated monies spent by parties in connection with federal elections has a corruptive effect on the system, or even leads to an appearance of corruption that justifies impairment of a party's First Amendment rights.

For these reasons, the limit on party coordinated expenditures under §441a(d) constitutes an unjustified limit on a party's political speech and associational activities. It is also bad public policy, since it weakens the role of parties in the electoral process and increases the influence of alternative means of campaign finance that are not as beneficial as party finance.

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**Table 1: Political Party Federal Financial Activity: 1977-1996**

| | | 1977-78 | 1979-80 | 1981-82 | 1983-84 | 1985-86 | 1987-88 | 1989-90 | 1991-92 | 1993-94 | 1995-96 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Democrats | Raised | 26.4 | 37.2 | 39.3 | 98.5 | 64.8 | 127.9 | 85.7 | 177.7 | 139.1 | 221.6 |
| | Spent | 26.9 | 35.0 | 40.1 | 97.4 | 65.9 | 121.9 | 90.9 | 171.9 | 137.8 | 214.3 |
| | Contributed | 1.8 | 1.7 | 1.7 | 2.6 | 1.7 | 1.7 | 1.5 | 1.9 | 2.2 | 2.2 |
| | Coord Exp | 0.4 | 4.9 | 3.3 | 9.0 | 9.0 | 17.9 | 8.7 | 28.0 | 21.1 | 22.6 |
| | Indep Exp | | | | | | | | | | 1.5 |
| Republicans | Raised | 84.5 | 169.5 | 215.0 | 297.9 | 255.2 | 263.3 | 206.3 | 267.3 | 245.6 | 416.5 |
| | Spent | 85.9 | 161.8 | 214.0 | 300.8 | 258.9 | 257.0 | 213.5 | 256.1 | 234.7 | 408.5 |
| | Contributed | 4.5 | 4.5 | 5.6 | 4.9 | 3.4 | 3.4 | 2.9 | 3.0 | 2.8 | 3.7 |
| | Coord Exp | 4.3 | 12.4 | 14.3 | 20.1 | 14.3 | 22.7 | 10.7 | 33.8 | 20.4 | 31.0 |
| | Indep Exp | | | | | | | | | | 10.0 |

*Source: Based on Federal Election Commission data. All figures represent dollars in millions.*

**Table 2: Political Party Nonfederal Financial Activities, 1991-96**

| Committee | 1991-92 | | 1993-94 | | 1995-96 | |
|---|---|---|---|---|---|---|
| | Receipts | Expenditures | Receipts | Expenditures | Receipts | Expenditures |
| Democrats | | | | | | |
| DNC | 31,356,079 | 28,388,869 | 43,923,516 | 45,097,098 | 101,905,186 | 100,483,977 |
| DSCC | 566,111 | 506,362 | 372,448 | 416,743 | 14,176,392 | 14,061,273 |
| DCCC | 4,368,980 | 4,017,579 | 5,113,343 | 5,135,552 | 12,340,824 | 11,822,790 |
| State Parties | 34,273,618 | 38,113,972 | 41,653,597 | 47,212,746 | 92,780,525 | 96,328,374 |
| Republicans | | | | | | |
| RNC | 35,936,945 | 33,601,431 | 44,870,758 | 42,413,166 | 113,127,010 | 114,401,973 |
| NRSC | 9,064,167 | 7,655,641 | 5,582,013 | 6,527,505 | 29,395,329 | 29,362,653 |
| NRCC | 6,076,321 | 6,209,404 | 7,371,097 | 4,747,525 | 18,550,773 | 28,746,879 |
| State Parties | 27,976,081 | 31,109,295 | 38,896,846 | 46,430,493 | 64,260,796 | 70,920,959 |

*Source: Based on data reported by the Federal Election Commission. All figures represent dollars.*

*Note: National and state party committees were not required to report nonfederal financial activity to the Federal Election Commission before 1991. State committee data include only the nonfederal share of funds raised and spent on activities related to federal elections. Figures do not include funds raised and spent solely in connection with state and local elections, which are not reported to the Federal Election Commission.*

**Table 3: Party Coordinated Expenditures By Committee, 1985-1996**

| Committee | 1985-86 | 1987-88 | 1989-90 | 1991-92 | 1993-94 | 1995-96 |
|---|---|---|---|---|---|---|
| Democrats | 8,977,048 | 17,926,840 | 8,724,233 | 28,050,903 | 21,213,171 | 22,576,000 |
| DNC | 343,348 | 8,107,044 | 117,427 | 11,269,458 | (348,251) | 6,695,323 |
| DSCC | 6,066,372 | 6,207,437 | 4,524,922 | 11,235,712 | 12,295,902 | 8,397,129 |
| DCCC | 1,545,376 | 2,425,603 | 2,877,283 | 4,135,861 | 7,730,815 | 5,689,644 |
| State/Local Committees | 1,021,952 | 1,186,756 | 1,204,601 | 1,409,872 | 1,534,705 | 1,793,904 |
| Republicans | 14,340,382 | 22,713,916 | 10,738,166 | 33,853,435 | 20,616,729 | 30,959,151 |
| RNC | 2,100 | 8,289,173 | 46,344 | 11,250,113 | 4,709,429 | 22,766,118 |
| NRSC | 9,959,330 | 10,250,538 | 7,684,154 | 16,477,387 | 10,905,500 | 308,319 |
| NRCC | 4,098,389 | 4,109,352 | 2,830,485 | 5,189,740 | 3,930,314 | 7,329,880 |
| State/Local Committees | 280,563 | 64,853 | 177,183 | 936,195 | 1,071,486 | 554,834 |

*Source: Based on data reported by the Federal Election Commission. All figures represent dollars.*

**Table 4: Allocation of Party Coordinated Expenditures: 1995-1996**

| | Democrats | | | | Republicans | | | |
|---|---|---|---|---|---|---|---|---|
| | No. of candidates | Dollar Amount | % of Total | Average Amount | No. of candidates | Dollar Amount | % of Total | Average Amount |
| President | 1 | 6,732,246 | 100 | 6,732,246 | 1 | 11,704,932 | 100 | 11,704,932 |
| Senate | 28 | 8,611,897 | 100 | 307,567 | 32 | 11,052,146 | 100 | 345,380 |
| Incumbent | 5 | 1,330,580 | 15 | 266,116 | 12 | 4,023,474 | 36 | 335,289 |
| Challengers | 10 | 2,638,799 | 31 | 263,880 | 7 | 2,350,308 | 21 | 335,758 |
| Open Seats | 13 | 4,642,518 | 54 | 357,117 | 13 | 4,678,364 | 42 | 359,874 |
| House | 316 | 7,035,843 | 100 | 22,265 | 156 | 7,998,844 | 100 | 51,275 |
| Incumbent | 132 | 1,426,212 | 20 | 11,595 | 63 | 2,962,096 | 37 | 47,017 |
| Challengers | 151 | 3,935,829 | 56 | 26,065 | 52 | 2,739,500 | 34 | 52,683 |
| Open Seats | 42 | 1,673,802 | 24 | 39,852 | 41 | 2,297,248 | 29 | 56,030 |

*Source: Based on data reported by the Federal Election Commission.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

Civil Action No. 89 N 1159

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FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANT

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE, ET AL., DEFENDANTS/COUNTER-PLAINTIFF

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**DECLARATION OF ROBERT HICKMOTT**

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1. My name is Robert Hickmott.

2. In 1980, I worked at the Democratic National Committee (DNC) as an Associate Finance Director during the Carter campaign. I did fundraising and advance work for the DNC, helping them raise money to make their 2 U.S.C. § 441a(d) coordinated party expenditures.

3. In 1981, I became the Executive Director of a new DNC entity, the Democratic Business Council (DBC). The Democrats had just lost the White House, and the DBC was an attempt to be more aggressive in our outreach to solicit contributions from the business community.



4. Towards this end, the DNC set a new $10,000 contribution level to join the DBC. Up to that time, it was $5,000. The $10,000 could include both corporate and non-corporate money. What contributors got in return was three or four weekend events throughout the country, in which they got together with party officials and Members of Congress to talk about issues, and to socialize. These were not fundraising events, but rather sustaining donor events where no additional money was raised. However, donors were asked to invite prospective donors, who might later decide to join the DBC.

5. Potential donors were told of these events in advance, as an incentive to join the DBC. There was a brochure that spoke about meeting other like-minded business leaders, as well as Members of Congress. For example, the Philadelphia Stock Exchange hosted DBC members at the Democratic Party's 1982 mid-term convention, and different Members came by and discussed business and economic issues with donors. We also had dinners and receptions attended by Members of Congress. Every now and then we would go to a nice resort like Palm Springs or Nantucket, and Members of Congress would come and talk with donors. Most events attracted in the range of 35-50 donors, out of an eventual total of about 150 donors.

6. We tried to match up donors' interests with the Members who would be present. These were usually corporate donors who contributed for business purposes, so we tried to arrange, for example, that they could discuss tax issues with Sen. Bradley; or telecommunications issues with Rep. Wirth, when he was Chairman of the Telecommunications and Finance

Subcommittee. They also had opportunities to play golf with the Members, to have cocktails with them, or just to hang out together.

7. I served as National Finance Director for Tim Wirth's Senate campaign from May 1985, through his election in Nov. 1986. We eventually raised over $4 million. I served on Sen. Wirth's Senate staff from Jan. 1987 until Feb. 1989; and then, after a couple of years as a lawyer in private practice, I joined the Democratic Senatorial Campaign Committee (DSCC) in Jan. 1991 as the Deputy Executive Director. However, the Executive Director and I also became de facto Finance Directors for the entire cycle and even, for a time, Political Directors, as well, after those holding the positions resigned. This was for the 1991-92 election cycle.

8. As such, we were responsible for running the DSCC's tally system during this cycle. The tally system goes back to at least when George Mitchell was Chairman [1985-86], and maybe further. It is an informal agreement between the DSCC and the candidates' campaigns that if you help the DSCC raise contributions, we will turn around and help your campaign.

9. In the 1986 Wirth Senate race, the DSCC could make over $100,000 in coordinated expenditures for our campaign, so there was pressure on the campaign, and on me, to raise this money for the DSCC. Sen. Mitchell, who was at that time the Chair of the DSCC, came out to Colorado. Norm Brownstein, a major Denver fundraiser, hosted a dinner and reception at which Sen. Mitchell was the featured guest. That and other



fundraising connected to the visit raised enough money for the DSCC to take care of our tally obligation, so that the DSCC would make the full amount of its permitted expenditures in support of our campaign. We also told contributors who had made the maximum allowable contribution to the Wirth campaign but who wanted to do more that they could raise money for the DSCC so that we could get our maximum § 441a(d) allocation from the DSCC.

10. Mr. Brownstein was one of our campaign's top fundraisers. He sponsored this event for the DSCC because it benefited the Wirth campaign.

11. There are prescribed limits for coordinated party expenditures set out at 2 U.S.C. § 441a(d), which the Federal Election Commission computes and publishes early in each election cycle. At that time we know the legal limit the DSCC can expend in each Senate race. Because the DSCC does not have enough money to fully fund every candidate, they look at a number of factors when making allocations. These include the financial strength of the individual campaign, how much money they have been able to raise for themselves, what are the poll numbers, does the campaign have a chance to win, and how much money has the campaign raised for the DSCC.

12. This situation was particularly acute in the 1991-92 cycle. Virtually every major State except Texas had a Senate election, plus we had two Senate races in California and a special election in Pennsylvania in 1991, following the death of Sen. Heinz.

13. There is no set formula of "magic threshold" for how much money candidates are expected to raise before the DSCC will turn around and help them. However, we kept very detailed ledger sheets showing how much money was tallied for each candidate. It got to the point where we talked to some campaigns on a daily basis, because they were so anxious to make sure that everything they were entitled to had been entered on their ledger sheet. When we got down to the allocation process, which traditionally begins after Labor Day, that was a key factor in deciding how much each Senate race was going to get in coordinated expenditures from the DSCC.

14. Because this was so important, people would ask others to help out. We frequently faced the situation where several people wanted credit for the same contribution to the DSCC, such as, for example, the National Association of Homebuilders' annual $15,000 donation. So we developed the policy that the contributor would have to say in writing how the check should be credited.

15. This system insured that the campaigns were very much on top of who contributed to the party committees. Early in each cycle, we held an incumbents' retreat, where all of the incumbent Senators were told by the Chairman of their obligation to raise money for the DSCC. The Chairman and I also went around and visited each Senator, telling them what services the DSCC could provide, but also asking how they planned to raise money to meet their DSCC fundraising goal.



16. Incumbents are usually in a much better position to raise money that are challengers and those running for open seats. We did have a challengers' retreat, which has a fundraising component but focused more on how to run a campaign and on the campaign services we could provide.

17. We kept both Sen. Robb, who was DSCC Chair, and Sen. Mitchell, the Majority Leader, apprised as to how much tally money had been raised by the individual Senators. Because Sen. Robb could not focus too closely on the DSCC at the time, Sen. Mitchell was in many ways the de facto DSCC Chair and therefore had substantial influence on its operation. They kept on top of the Senators and admonished Senators who had not produced their fair share of contributions to the DSCC.

18. Incumbents who were not raising money for themselves because they were not up for reelection would sometimes raise money for other Senators, or for challengers. They would send $20,000 to the DSCC and ask that this be entered on another candidate's tally. They might do this, for example, if they were planning to run for a leadership position and wanted to obtain the support of the Senators they assisted. This would personally benefit them, in addition to their doing their part to retain Democratic control of the Senate, which would preserve the legislative power of all Democratic Senators. While there was some talk of crediting part of this to their tally in a future cycle, we never did this, because we did not think the DSCC should be bound in subsequent cycles by money that had been raised and spent in a previous cycle.

19. The biggest problem with the tally system was that Senators and candidates wanted an ironclad contract that whatever money they raised for the DSCC would automatically be spent in support of their campaigns. That would be earmarking, which is illegal, and so we could not do it.

20. It is obvious that a fledgling campaign that is struggling to meet its payroll, buy media, and so forth, and knows that the DSCC can allocate to them several hundred thousand dollars, wants to make certain that it will get back all of the money it raises for the DSCC. A lot of their local fundraisers and contributors hate the DSCC, they view it as a Washington fundraising entity, and want a guarantee that, if they make a $20,000 contribution to the DSCC their candidate will see that money returned.

21. We would insist that we review the fundraising letters that campaigns would send out, and would frequently have to rewrite them with respect to the tally process. While the campaigns did not like this, the only way the DSCC can hope to raise the amount of money it needs to spend is if the individual campaigns assist in raising a significant portion of the DSCC's overall budget.

22. The way the system operates, the bottom line has to be that some candidates get back more money than they raise, and others get back less. How much money a particular candidate received depended on the financial strength of the campaign itself, including both what they had raised on their own behalf and how much there was on the tally for the DSCC, and what their poll numbers looked like.



23. One thing we did across the board, for every campaign, was to give them a check for $ 17,500, the maximum direct contribution we were allowed to make under 2 U.S.C. § 441a(h). This had not been done in the past because of the feeling that some campaigns did not need it. However, we gave it to everyone. As I recall, we asked for this money back when Richard Shelby and Ben Nighthorse Campbell switched parties.

24. Then the campaigns would start pleading with us for additional money. Early on, we would look at what their needs were, maybe an early poll or an early media buy, and we would fund those projects. When we got into the real allocation process, the DSCC's Political Director, the Executive Director, and I would sit down and review exactly those factors I have noted above. We would then make recommendations to Sen. Robb and Sen. Mitchell for the allocation process. There was a group of other Senators, the Allocation Committee, involved as well. Sometimes they would approve our recommendations, but they might also increase them. Candidates know when there is going to be an allocation meting, and start lobbying members of the Allocation Committee, barraging them with news clips and poll numbers, arguing that an extra $200,000 would put them over the top. The Senators on the Allocation Committee would argue over who had the best chance of winning or who needed the money most. For example, we might have recommended spending a total of $750,000 at a particular time and the Allocation Committee would commit $900,000.

25. Also, as it got closer to Election Day, when it seemed we could win every race, Senators would urge us to borrow an additional $2 million, promise faithfully

to help us repay it, and then be nowhere to be seen after the election. That is why the DSCC winds up spending the first 6-8 months of each new cycle paying off debts of the previous cycle.

26. The allocation process may have changed since I left. It is my understanding that Sen. Kerry, the current Chairman, makes most of these decisions unilaterally.

27. Traditionally the DSCC was about one thing, raising money. In the mid-1980's, they started getting into more areas, such as campaign services, strategy, and opposition research. They now have a staff between 25 and 35 people, most of whom are involved in fundraising. But there is a press operation, an opposition research operation, and a political operation as well.

28. During the election cycle I served on the DSCC, the political component of the DSCC would be in daily contact with the campaigns. They tried to know each campaign as well as an outsider can possibly know it. There were also constant visits by the Political Director and his or her staff, so they knew if the campaigns were (or were not) doing well. In my election cycle three people worked for the Political Director. They divided up the different campaigns by region and served as their campaigns' contact at the DSCC.

29. The DSCC contact advised the campaign whether it should be doing opposition research. In the case of a challenger, the DSCC might help the campaign understand what was happening in Washington on a legislative issue and how that could work to their



advantage as a challenger. The DSCC contact would also ask incumbent Senators to campaign for a certain challenger.

30. We kept lists of fundraisers, pollsters, and media consultants that we made available to those who requested them. In one of the prior cycles we had a team of Democratic consultants who would fly into a campaign and try to help the campaign get up and running, the expenses of which would be allocated to that campaign. We pretty much let the campaign take the lead in how the money was spent. If we thought the money would be better used in other ways, we would tell them, but the final decision was theirs. They would send us their bills for the agreed upon amount, and we would pay them.

31. I am not aware of any instance in which a Senator who had to cast a particularly difficult vote was promised DSCC money in return for that vote. On the other hand, I know the DSCC did not receive money from certain people or groups because Sen. Robb voted in favor of Clarence Thomas; and at times the labor community withheld money because they did not like some of his votes. While it is likely they did try to influence his vote on certain issues in exchange for their support of the DSCC, they would have done that through the normal legislative process, through lobbyists visiting his Senate office, and not through the DSCC.

32. The Majority Leader decides who will Chair the DSCC. Consideration is given to who can raise money, as well as who is well thought of by contributors and has broad appeal to the business community.

33. The DSCC Chair is considered part of the Senate Leadership, and as such may have access to the Party's political agenda and be able to see how certain actions impact on the overall politics of the Democratic Party in the Senate.

34. Approximately 50% to 60% of the DSCC's money was raised by incumbent Senators and Senate candidates. We also had direct mail money and several sustaining donor programs. The Majority Trust was for $20,000 contributors (hard money). The Leadership Circle was for contributors of $15,000 in hard money, and was made up largely of PACs. There was also a Business Roundtable that was for $5,000 contributors.

35. What contributors got for their contributions to the DSCC was similar to what we did years before at the DNC and the DBC. They would be invited to weekend events in which they would go to the Superbowl or to Nantucket with Senators. They would socialize and discuss their interests and concerns. Donors paid their own travel costs to these events. The DSCC paid for the Senators' travel, since we viewed this as an opportunity to spotlight candidates for potential contributors. We would also pick up the tab for the meal functions, or sometimes these were furnished as corporate in-kind contributions.

36. Some contributors made part of their required $15,000 or $20,000 contribution by raising money for the party from others or by attributing the cost of hosting a Sustaining Donor event in their homes against their annual contribution to the DSCC. We could encourage contributors to recruit other potential contributors by inviting them to attend. Then we would contact these



people and solicit them for a contribution, hoping they would be interested in the opportunity to rub elbows with the Senators and party officials.

37. We were at times able to combine fundraising projects. For example, if we were holding a Majority Trust weekend in Nantucket, some Senators might stop in Boston on the way and do a tally event for Sen. Kerry's campaign.

38. We also had monthly breakfasts featuring a guest speaker, such as a Senator who was of interest to the contributors. Sen. Robb would usually give an update on the different races at these breakfasts.

39. The larger the contribution, the smaller and more exclusive the group of people who attended the get togethers with the Senators. For example, at the Democratic Convention in New York in 1992, the Majority Trust got better seats in Madison Square Garden, and I think they also got a luncheon with Sen. Mitchell and the Democratic Leadership. This was smaller and more intimate than the Leadership Circle functions, which were smaller than the $5,000 donor functions.

40. The annual DSCC dinner is at the other end of the spectrum. It is a huge event, and each Senator is told he or she has to sell tickets for a certain number of tables at $20,000 a table. A Senator might go to a prominent lobbyist and ask for help in raising this money from the lobbyist's clients. Later, the Senator might remember that the lobbyist had helped him or her raise this money, at the time that the lobbyist's

clients needed the Senator's help with a legislative matter.

41. Early in each election cycle the DSCC would routinely contact the State Democratic Party committees in all states in which we had Senate candidates, and ask that they transfer their coordinated expenditure limit ("§ 441a(d) authority") to us. They never to my knowledge asked for anything in return. No state ever refused to hand over its § 441a(d) authority or even tried to give us only partial authorization. On the contrary, they appeared to be relieved to be rid of their obligation to raise hard dollars to spend on their Senate candidates. Occasionally, if we could not fully fund a race, we would return that authority to the state party at the state party's request, so they could try to raise and spend the full amount authorized by law.

42. In the final stages of the 1992 election, we had a lot of coordination with the DNC and the Clinton/Gore campaign, to the point that we were making recommendations to them as to where an infusion of their money would help our Senate candidates. This was get out the vote ("GOTV") money. Typically, though, we did not have a close working relationship with them, or with the DCCC. This may have changed now that the DNC has a lot more money than it used to.

43. Nor did we have much to do with the coordinated campaigns for state candidates run by the individual state party committees, became back then we raised very little soft money. We might instruct challengers how to conduct a GOTV campaign, but that was tutorial, rather than part of our budgeting and



fundraising operation. Again, this may have changed since soft money is a much larger component of the DSCC's expenditures than when I was there.

44. We had very little contact with the state party committees at all. Most of our dealings were directly with the Senate campaigns, and those campaigns then dealt with their state parties. Most state parties were so anemic and ineffective that, from our point of view, there was little to be gained from direct interaction. There were a few that had enough resources to have some impact, such as the California and New York state party committees, but not very many.

45. This was also true of Sen. Wirth's 1986 race. We were such a cash-starved campaign that we were fully preoccupied with raising money for the campaign, rather than for the State Party. There was some orchestration between the State Party and the Wirth campaign as far as the things they could do for us under the law, such as generic party building and GOTV, but that was handled by the State Party Chairman and the Wirth Campaign Manager in Colorado, while I remained in Washington.

46. There is a very rare strata of contributors who contribute large amounts to the DSCC because they actually believe in Democratic politics and the fact that the Democratic Party represents something that the Republican Party does not. The majority of those who contribute to political parties do so for business reasons, to gain access to influential Members of Congress and to get to know new Members.

47. If you want to get to know Members of Congress, or new Members of Congress, it is more efficient to write a $15,000 check to the DSCC and to get the opportunity to meet them at our various events than it would be to write fifteen $1,000 checks to fifteen different Senators, or Senators and candidates.

48. This can ultimately prove useful when the contributor calls up and reminds a Senator that he met him in Minneapolis at the Superbowl, and says he would like to come in and discuss pending legislation. The door is more likely to be open to him than if the call was from a non-contributor.

49. On occasion a contributor would call the DSCC and ask us to arrange a meeting with a Democratic Senator, and we would try to comply. We maintained good relationships with the Administrative Assistants [AA] in the Senators' offices; and, while we would not say you must do this, we would spell out the circumstances in seeking agreement to meet with the contributor. Since we did not deal in legislation at the DSCC but were purely a fundraising committee, we might not know if there was something going on that would make a particular meeting inappropriate. If so, the AA might tell us it wasn't the right thing to do at the time.

50. There were some contributors who expected something further for their money and did not like being told they could not have this meeting arranged. No one ever asked for their money back in that situation, although some threatened not to contribute in future years. Since we were an incumbents' committee,



we felt an obligation to protect the Senators from being placed in a potentially awkward situation.

51. A lot of our big contributors were contributing to the Republicans as well. If you look at our Leadership Circle, which is predominantly $15,000 PAC contributors, there is a high correlation between those who give money to the DSCC and those who give money to the Republicans. This was less likely to be true of Majority Trust members, who were mostly business people who were Democrats.

52. Sometimes a contributor would give money to the DSCC in lieu of giving to a candidate. For example, if a candidate did not take PAC money, the PAC might donate to the DSCC instead and have it tallied to that candidate's account.

53. I think there ought to be limits on what parties can spend on elections. It is hard to quantify a direct correlation between large contributions and corruption, or appearance of corruption, in the political process. On the other hand, recent allegations about large amounts of money flowing into the DNC or the Clinton/Gore White House certainly give the perception that there is a correlation between access and large contributions. Both parties sponsor Sustaining Donor programs, such as those we have been discussing, for which the party committees sponsored events where large contributors would meet with Senators. Increasing the amount of money that [redacted] committees can spend on campaigns will necessarily increase the pressure to raise money through such events.

54. Obviously I would have liked to have had more money when I was with the DSCC. We lost several races by just a few percentage points. However, I think the system is prone to corruption. If unlimited amounts of money can be spent, and this is not properly policed, a national party committee could overwhelm a Senate race with money. We keep ratcheting up the limits, and there is no telling where this will end.

55. This all comes back to the allocation system. This is a decision made by Democratic Senators. If people start giving $50,000, $100,000, or $500,000 to a party committee, even if that is soft money, they would probably expect a greater voice in how that money was spent and what they would want in return. It is unrealistic to think that if I give you a check for $500,000, I will not expect you to make the largest possible contribution to my favorite candidate who can do the most for my legislative concerns.

56. Permitting such large contributions would also discourage participation by those who can only make small contributions. People already think the system is so out of whack, they ask, why should I give a check for $25 or $50, because that doesn't really mean anything. The direct mail proceeds for all three Democratic national committees have gone way down, and these donors are the "true believers." Many of them are retired, and are concerned about issues like Social Security and liberal philosophical issues. I think their participation is an important aspect of democracy, and it would be a shame if they stopped contributing because they feel their small checks have no impact.



57. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ ROBERT HICKMOTT
ROBERT HICKMOTT

Executed on this 8th day of April, 1997.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

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Civil Action No. 89 N 1159

FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANTS

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE, ET AL., DEFENDANTS/COUNTER-PLAINTIFF

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**DECLARATION OF ROBERT ROZEN**

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1. My name is Robert Rozen.

2. I began working for Sen. Wendell Ford after I graduated from law school in June 1980. I was responsible for all issues before the Senate Finance Committee, and from the spring of 1984 until early 1985 I handled his work with the Rules Committee, on which he was Ranking Minority Member.

3. From January 1985 until January 1995, I worked for Sen. George Mitchell. I handled a variety of legislative issues from Sen. Mitchell, including tax, trade, banking, and other financial issues, including campaign finance reform.



4. Sen. Ford chaired the Democratic Senatorial Campaign Committee (DSCC) in the 1981-1982 election cycle. Sen. Mitchell held this position in the 1985-1986 cycle. My experience was that both Senators kept their DSCC work separate from the office, in the sense that no legislative staff was involved with DSCC campaign activities. I had no direct involvement in DSCC work, although I did gain general knowledge about DSCC operations from my proximity to the Chairmen. Additionally, my extensive work from 1987 through 1994 on campaign finance reform legislative efforts exposed me to DSCC issues. It is my sense that Administrative Assistants know who has contributed both to their Senator's campaign and to the DSCC, although some of them keep closer track of this than others.

5. At least on the Democratic side, the Majority Leader is heavily involved with the Senate campaign committee. The Majority Leader picks the Chair of the DSCC, and is also involved in candidate recruitment, a primary responsibility of the DSCC. Even if other Senators or DSCC staff members make the initial contacts, the Majority Leader wants to size up potential candidates and be helpful in encouraging potentially strong candidates to run for office. Oftentimes, the candidates want to close the deal with the leader of their party in the Senate.

6. Other than recruiting candidates, the DSCC's main responsibility is raising money for Senate campaigns. Especially during the last 15 months of an election cycle, the Committee is very active. Many

weekends, four or five Senators will be out on the road, raising money at DSCC events. Certain Senators are bigger draws than others, and the Majority Leader usually is the biggest draw of all. So he probably attends as many of these events as anybody else other than the Chairman.

7. Under the DSCC's tally system, all Senators are expected to help raise money for the party. Some do it more enthusiastically than others, but the expectation is there. Senators can solicit contributions directly, or sponsor fundraising events on behalf of the DSCC. The DSCC also sponsors its own events, using Senators to draw contributors.

8. Sen. Mitchell took an especially active role with the DSCC after he was elected Majority Leader in Nov. 1988. For example, it was his decision that the DSCC did not raise soft money during his six years as Majority Leader.

9. It is only natural that most individuals and PACs want to make sure that they get maximum recognition for whatever money they contribute. Of course, some expect nothing in return, while others are more aggressive in trying to get a lot of mileage out of their contributions. I would expect most of the largest PACs give the maximum allowed, or close to it, to party committees, and then send their members to party events or otherwise attempt to meet personally with Senators. They may buy a table at an event for $10,000 and invite staff or a Member to sit at the table. Other events are stand-up receptions where this sort of close interaction is more difficult. But the idea for anyone who goes to any of these events is to be seen by Members of Congress.



10. Contributors believe this interaction has an effect on Members, whether it does or not. Certainly, it does have an effect on some Members. If you are raising money for your campaign, or you have a tally and you're raising money for the party, and you have solicited a $15,000 or $20,000 contribution, oftentimes this is going to have some effect. This is just based on human relationships, you are grateful to people who want to help you and naturally want to be responsive to them.

11. The bottom line is that there is a symbiotic relationship between contributors and candidates. A contributor gives to have the opportunity to influence a Member, and the Member is willing to provide this opportunity in order to raise more money. While this is usually subtle, it can be extremely direct. For example, I know of a company that was recently involved in a legislative battle critical to its bottom line. One Senator in particular was working on this issue. The company, which was known to be a financial supporter of the other party, was asked by the Senator, "Well, where have you been?" and the Senator's representatives later told the company that they had to "be at the table," to contribute, if they wanted their views to be heard. This was a shakedown, pure and simple. And it worked – the company wound up contributing to the national Senatorial Campaign Committee of the Senator's party, as requested.

12. Very little money that does not come through the mail is what I would call "detached" money. Typically, a contributor gives money to establish relationships, to be able to lobby on an issue, to get close to Members, to be able to have influence. While an elected official of course does not have to do something because somebody gave, a contribution helps

establish a relationship, and the more you give the better the relationship. It is not that legislation is being written in direct response to somebody giving a lot of money. Rather, it is one step removed: relationships are established because people give a lot of money, relationships are built and are deepened because of more and more money, and that gets you across the threshold to getting the access you want, because you have established a relationship.

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ ROBERT ROZEN
ROBERT ROZEN

Executed this 17th day of April, 1997



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

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Civil Action No. 89 N 1159

FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANTS

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE, ET AL., DEFENDANTS/COUNTER-PLAINTIFF

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**DECLARATION OF THE HON. PAUL SIMON**

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1. My name is Paul Simon. I represented the 24th Congressional District of Illinois in the U.S. House of Representatives between 1975-1985, and served as a U.S. Senator from Illinois from 1985 to 1997.

2. While serving in the House, I made phone calls to raise money for the Democratic Congressional Campaign Committee (DCCC). I also attended their fundraising events, both in the Washington area and in other cities. After I moved to the Senate, I did much the same thing, on a larger scale, for the Democratic Senatorial Campaign Committee (DSCC).

3. While some of the party committee events I attended were large affairs, most had 20-25 people and were held in somebody's home. They usually were held

for the benefit of a specific Senate campaign as well as for the party committee itself. Each House Member or Senator present would say a few words, as would the Chair of the DCCC or the DSCC, and then we would socialize with the donors. About once a year I attended an all-day conference for major donors where Senators would each speak about legislation we were interested in, and answer questions.

4. The DCCC and the DSCC would ask Members to make phone calls seeking contributions to the party. They would assign me a list of names, people I had not known previously, and I would just go down the list. I am certain they did this because they found it more effective to have Members make calls. However, my phone manner is rather low key, lower key than the committees like.

5. I tried to avoid asking donors who had previously given to my campaigns to contribute to the party committees, because I didn't want to overdo my welcome. However, I did co-host party fundraising events in Illinois, where invitations were likely sent to my contributors.

6. If this were a DSCC event, the money raised would be credited to Senate candidates based on the DSCC's tally system. Donors would be told the money they contributed could be credited to any Senate candidate. The callers would make clear that this was not a direct contribution, but it was fairly close to direct. So contributors would have the sense that this would benefit my campaign, if they contributed to the party.



7. While I don't believe we were given a specific fundraising goal, we knew how much the DSCC could contribute in Illinois, which in my campaigns was a little more than $1,000,000. It was recognized that the closer you came to that with your tally, the more likely you were to get the full $1,000,000.

8. With regard to the Illinois Democratic Party, my own experience was that I more frequently got requests from them for money than the other way around. I sometimes made phone calls for them, or they would request a check for $5,000 to help with get out the vote activities, or a gubernatorial race. I may also have appeared at fundraising events for the State Party.

9. However, I generally did not work closely with the State Party on anything, because I never regarded them as major players. This has been true historically in Illinois, although it may be different in other States. It may also be different in Illinois, with regard to state races. But they were not a significant factor in my Senate races.

10. It is not unusual for large contributors to seek legislative favors in exchange for their contributions. A good example of that which stands out in my mind because it was so stark and recent occurred on the next to last day of the 1995-96 legislative session. Federal Express wanted to amend a bill being considered by a Conference Committee, to shift coverage of their truck drivers from the National Labor Relations Act to the Railway Act, which includes airlines, pilots and railroads. This was clearly of benefit to Federal Express, which according to published reports had

contributed $1.4 million in the last 2-year cycle to incumbent Members of Congress.

11. I opposed this in the Democratic Caucus, arguing that even if it was good legislation, it should not be approved without holding a hearing, we should not cave in to special interests. One of my senior colleagues got up and said, "I'm tired of Paul always talking about special interests; we've got to pay attention to who is buttering our bread." I will never forget that. This was a clear example of donors getting their way, not on the merits of the legislation, but just because they had been big contributors. I do not think there is any question that this is the reason it passed.

12. I believe people contribute to party committees on both sides of the aisle for the same reason that Federal Express does, because they want favors. There is an expectation that giving to party committees helps you legislatively.

13. Giving to party committees also helps you gain access to Members. While I realize some people argue donors don't buy favors, they buy access, that access is the abuse, and it affects all of us. If I got to a Chicago hotel at midnight, when I was in the Senate, and there were 20 phone calls waiting for me, 19 of them names I didn't recognize and the 20th someone I recognized as a $1,000 donor to my campaign, that is the one person I would call. You feel a sense of gratitude for their support.

14. The fact that big donors have access gives them a huge leg up in the process. In a very real sense, we are going through the old fight between Thomas



Jefferson and Alexander Hamilton: should propertied interests have preference in what goes on in government? And our answer, with our present system of financing campaigns, is yes, people with money are going to be given greater influence, because their names are going to be recognized. They are going to have greater access than those who did not contribute.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ PAUL SIMON
PAUL SIMON

Executed on this 3rd day of May 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

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Civil Action No. 89 N 1159

FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANT

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE, ET AL., DEFENDANTS/COUNTER-PLAINTIFF

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**DECLARATION OF FORMER SENATOR TIMOTHY E. WIRTH**

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1. I am Timothy E. Wirth, Undersecretary of State for Global Affairs. I completed graduate studies in 1973 and also held appointments in the executive branch of the federal government from 1967-70.

2. I am a former Member of Congress ("Member"). In 1974, I was elected to the U.S. House of Representatives ("House) from the Second Congressional District of the State of Colorado ("second district"). I represented this District through 1986. From 1987 through 1992, I served as a Senator for the State of Colorado in the U.S. Senate ("Senate"). In 1992, I decided not to run again for the U.S. Senate. During my approximately 18 years of Congressional service, I campaigned



for election or for re-election to federal office seven (7) times.

3. During my election campaigns, I raised funds for the Democratic Party to support my campaign.

4. By the early 1980s, I understood that the Colorado Democratic State Party was becoming progressively less capable of raising funds. Because I was successful at fundraising and could reach various constituencies effectively, I worked to raise funds for the state party.

5. When I solicited contributions for the state party, in effect I solicited funds for my election campaign. I understood that the solicitees who made contributions to the party almost always did so because they expected that the contributions would support my campaign one way or another, and for the most part they expected I would remember their contributions.

6. The chairman of the state party served at the pleasure of Democratic elected officials. He knew the amount of funds I had raised for the state party, and this helped me to participate in deciding how the party would spend its funds. For example, the party used some of the funds to finance a Get Out The Vote campaign ("GOTV") for the second district when I campaigned for the House seat, and for the entire state when I ran for the Senate seat in 1986. During the time I was in Congress, we tried to persuade other Democratic candidates for House seats in other congressional districts in Colorado to raise funds for the state party, to enable the party to finance similar GOTV campaigns in their respective districts. These coordinated GOTV

campaigns were important for Democratic candidates at all levels, and when properly operated, gave some leadership to the Members of Congress, and helped to knit together a naturally disparate party.

7. Although most of my experience in fundraising for the Democratic Party was for the state party, I also successfully solicited funds for a national party committee, the Democratic Senatorial Campaign Committee ("DSCC"). The DSCC required that I raise a certain amount of money for the committee before my campaign could receive DSCC funds. I knew how much I needed to raise because the DSCC applied a formula, depending on the size of a particular candidate's state, for fundraising and for expending funds in a race that it considered "marginal". A "marginal" race was one in which the candidate received 55 percent, or less, of the vote in the preceding election.

8. I understood that when I raised funds for the DSCC, the donors expected that I would receive the amount of their donations multiplied by a certain number that the DSCC had determined in advance, assuming the DSCC had raised other funds. For example, a donor might expect that for every dollar contributed to the DSCC I would receive $3 from the DSCC.

9. In this fundraising, I often solicited contributions to the DSCC from individuals or Political Action Committees (PACs) who already had "maxed" (contributed to my campaign committee the maximum amount allowed by federal law). I did so because as I remember, individual solicitees were allowed by law to contribute $20,000 to the DSCC in a calendar year,



whereas they were allowed to contribute to my campaign only $1,000 each for the primary election and the general election. I don't remember the size of the limitation on PACs.

10. This activity was a standard among most candidates, including me, to augment the $2,000 contribution limit for individual contributors to a candidate's campaign. While most individuals wouldn't contribute more than the $2,000 limit, those few who did were very welcome.

11. I solicited funds from corporate offices and law firms. It was easier for these entities to get together and, for example, have 20 lawyers give $1000 than try to contact each individual for a contribution. And from time to time an entity would simply give $20,000 to the DSCC, which made life easier for everyone.

12. For the most part the only reason the DSCC would have known what activities to finance in Colorado during my 1986 Senate race was from information it received from me or from my campaign committee. In addition to expending funds for aspects of my campaign, the DSCC hired experts to give advice and ideas for the campaign, and assisted my campaign's efforts in GOTV, media and polling. The national party committees also provided generic advertisements that several candidates could use in their campaigns, this was a practice more likely to be used in House rather than Senate races.

13. The DSCC also helped to coordinate political activities among candidates. For example, at a March 31, 1992 dinner hosted by Charles S. Robb, Senator

from Virginia and then Chairman of the DSCC, about 12 of the 16 Democratic Senators who faced re-election campaigns that year met for a "supper and strategy session." Most senators were accompanied by their senior staff. The Senators predominantly discussed re-election matters such as polling and target groups, rather that public policy issues before the Congress. This "supper and strategy session" served as one means by which the Senators shared experiences and exchanged information about what their opponents were doing (often the opposition ran similar attack programs in many states across the country), and we communicated campaign needs to a national party committee, the DSCC.

14. From time to time I introduced large donors to the national party committees. The Democratic Party was then the majority party in Congress and often these donors making large contributions to the party wanted to become acquainted with party leaders. The introductions also served as a mechanism for donors to meet chairmen of important congressional committees, such as the House Ways and Means Committee and the House Armed Services Committee. Democratic leaders, such as Representative John D. Dingell, chairman of the House Energy and Commerce Committee, and former Representative Tony Coelho, House Majority Whip, hosted dinners for large party donors to dine with Democratic Members of Congress. Former Representative Coelho also formed a House campaign committee called something like the "Chairman's Circle", which hosted dinners which supported the Democratic Congressional Campaign Committee.



15. The Democratic national campaign committees sometimes asked me to meet with large donors to the party whom I had not met before. At the party's request, I met with the donors. I understood that the donors' goal in making the large contributions was often to occasion meeting(s) with me or other prominent Democratic congressional leaders to press their positions on legislative issues. On these occasions, sometimes all I knew about the donor would be the issue in which he was interested.

16. One reason persons contributed to the party was to obtain help for their problems from Members. Obviously another purpose of such contributions was to secure the political decision the contributors favored, possibly by securing the votes of certain Members. In my Congressional experience, most of the largest contributors to the party committees customarily received more access to a Member than individuals who contributed only $1,000, or average constituents who gave little or not at all. It's pretty obvious that anyone who states that most donors give to a party for purely altruistic reasons is not being fully candid.

17. I believe that when a corporation contributed a large amount, to a party committee that, in turn, used its funds to support its candidates' campaigns, the corporation would obtain undue influence over these candidates. This occurred because, in my experience, the candidates were generally aware of the sources of the funds that enabled the party committee to support their campaigns.

18. Members who planned to seek re-election also understood that, all other things being equal, it would

be helpful if they cast their votes in a way that helped their party, party committees, and thus these large donors. This was never explicitly stated, but it was certainly helpful to the party and therefore to one's own opportunities in the next election cycle.

19. I am aware of the print and broadcast media's disclosure of the sources of funds for campaign committees and party committees. Based on my experience and what I have read and seen, I believe that mere disclosure, without legal limits on what party committees may spend, is not sufficient to prevent either the reality or the appearance that a Member's votes are influenced by large donors to the party.

20. Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the forgoing is true and correct.

/s/ TIMOTHY E. WIRTH
TIMOTHY E. WIRTH

Executed on this 5 day of May, 1997



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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CV 89 N 1159

FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANT

*v.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE, DEFENDANT/COUNTER-PLAINTIFF

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REPORTER'S TRANSCRIPT
(HEARING ON CROSS MOTIONS FOR SUMMARY JUDGMENT)

PROCEEDINGS BEFORE THE HONORABLE EDWARD W. NOTTINGHAM, JUDGE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO ON THE 15TH DAY OF MAY, 1998 IN COURTROOM C-201 UNITED STATES COURTHOUSE, DENVER, COLORADO

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APPEARANCES:

For the Plaintiff
and Counter-Defendant:

Federal Election Commission
BY: COLLEEN T. SEALANDER, Esq.
STEPHEN E. HERSOKOWITZ, Esq.
999 E Street, N.W., Room 657
Washington, D.C. 20463

For the Defendant
and Counter-Plaintiff:

Wiley, Rein & Fielding
BY: THOMAS W. KIRBY, Esq.
JAN WITOLD BARAN, Esq.
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1717 K Street, N.W.
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* * * * *

committees from any other type of political committee that makes contributions to candidates by using the contributions of others, and because the Federal Election Commission has shown the parties and their donors have both the capacity and the opportunity to link dollars with political favors, this court should grant summary judgment in favor of the commission.

THE COURT: Well, don't you agree that Buckley did say that the restriction on speech was marginal?

MS. SEALANDER: That was about to be my next point, your Honor. Buckley did say that the restriction on speech, when you restrict the amount that can be contributed to a candidate, is only marginal. And contrary to the Colorado Party's assertions this afternoon, we showed evidence in other exhibits and in our facts that indicates that in many instances party-coordinated expenditures are no different than the writing of a check.

THE COURT: Well, let's talk about your facts. First of all, aren't all of these newspaper reports that you've submitted hearsay?



MS. SEALANDER: Yes, Your Honor, they would have been hearsay had we offered them for the truth of the matter asserted, but as we tried to explain, we offered them instead to illustrate the public perception—people read these newspapers—and the perception of the commentators who wrote the articles or sponsored the editorials.

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PAUL SIMON DEPOSITION
FEC v. Colorado Republican FEC
June 18, 1997

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Q. What I'm trying to now do is focus in on levels.

Do you believe that the million dollar authority that they had in the last election placed them in a position to corrupt you, if that's what they wanted to do?

A. Well, the answer is I have never promised anyone anything for any campaign.

Q. Sure.

A. They would know me well enough to know that if they were not very low key, I would resist strongly.

But when I talk about a million dollars, this is in an $8.4 million expenditure. If you go up to—if that million dollars was part of three million dollars, one third, that puts somebody under appreciable dependence and you are—I think you are getting on to very thin ice.

Whether you get on the thin ice when you go from a million to a million and a half, I can't quantify it precisely.



Q. All you can any is as the number goes up, the ice gets thinner?

A. That's exactly right.

Q. Now, I believe you indicated, though, that you could not recall any situation in which the party proposed a direct quid pro quo, we'll give you our support if you vote a particular way.

A. That is correct.

Q. Is that true in your congressional races as well as your Senate races?

A. Yes.

Q. Now, I've been told that the Senate is a sort of cozy club. I don't know whether that's true or not.

Have any of your fellow senators ever told you that the party made such a quid pro quo demand of them, you vote this way or we won't support your campaign?

A. I don't recall that happening. I'm not saying it didn't happen. I don't recall.

I think the committee chairs, whether it's the Senate or the House, would be aware that I would strongly resist anything like that. I think they would be smart enough not to try it on me, while they might be willing to try it on some others.

Q. You believe that the Democratic Committee chairs might be willing, in fact, to demand quid pro quo votes for Democratic Committee support?

A. I think they would be getting on dangerous ice legally if they were to do that. I doubt that it ever is quite that blunt, but you can do the same thing without being quite that blunt and without violating the law.

Q. You don't recall any of your fellow senators saying to you "All those guys have told me I've got to vote this way or they are not going to support me in the next campaign"?

A. I do not.

Q. What about individual contributors to your campaign? Did you ever encounter quid pro quo

demands from individual contributors?

A. The only time I can recall it being completely – this goes back to when I was in the state legislature.

Some cemetery group, of all people, came to me and said they had contributed $200 to my campaign and I voted against some legislation they wanted on headstones. I can't remember any of the details. I offered to return the $200. They declined that. That's the only time.

Now, I have had people say to me "We were good to you in the last campaign. We would sure appreciate your vote on this amendment or this bill." It is not very subtle.



Q. It sounded to me from what you just said and from reading your affidavit that there, to some extent, may be a continuum where the more directly the money is coming to you from the individual donor, the greater the potential is for some such coercive attempt to be made, is that fair?

A. I think you are correct, but I think you

have to be careful as you make that assumption.

I think if money goes to the party and then from the party to me there is a little bit of a safeguard.

But we have a situation – I happen to be co-chairing together with Bill Stratton, former Republican governor of Illinois, a group looking at public finance or the whole campaign finance.

Illinois has the weakest campaign finance laws of all 50 states right now. You name it, you can do it in Illinois, including taking all of your campaign – if I have campaign contributions and I want to pay for my daughter's college tuition, you can do it in Illinois.

In Illinois the party leaders, the legislative leaders – I mentioned today the state party being weak in Illinois. The state party is strong in Illinois in terms of the state legislature, not in terms of the United States Senate.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM

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Civil Action No. 89-N-1159

FEDERAL ELECTION COMMISSION,
PLAINTIFF/COUNTER-DEFENDANT,

*vs.*

COLORADO REPUBLICAN FEDERAL CAMPAIGN
COMMITTEE, ET AL., DEFENDANT/COUNTER-PLAINTIFFS

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Washington, D.C.

Wednesday, August 6, 1997

The deposition of TONY COELHO, called for examination by counsel for Counter-Defendant in the above-entitled matter, purusant to Notice, in the offices of the United States District Court, 3rd and Constitution Avenue, N.W., Washington, D.C., convened at 12:40 p.m., before Paula J. Eastes, a notary public in and for the District of Columbia, when were present on behalf of the parties:

* * * * *

support their candidates, that will tend to favor incumbents because incumbents do have other sources



of support, whereas challengers really need to look to the party.

Is that fair?

A. Yes. I think that is fair. I don't think that is farfetched. I think that to a great extent when you limit the role of the party, you basically are protecting the good old boy network, as opposed to reaching out.

Now, I think, in fairness, I could say that to some extent it may depend on who controls the apparatus too. It can be abused by the party. But I think on paper, in theory, most times it is a positive.

Q. While you were the head of the DCCC, did you ever persuade members to support the interests of big donors because they were big donors?

A. No.

Q. During the time that you were head of the DCCC, did you ever go to members and tell them you have to vote this way because that is what this big donor for the party wants you to do?

A. No, sir.

Q. During the time that you were head of the DCCC, did you have the power to coerce members to vote to support the interests of the big donors if you wanted to do it?

A. That is a hard question to answer.

I think I would say no, but I think people could interpret by not being willing to support somebody in a committee assignment or not willing to target a political race, that the potential abuse is there and this power, in

the hands of the wrong person, could be used negatively.

The answer to that question is in the wrong hands it could easily be yes, but, again, it goes back to my discussion earlier about the baseball game. I don't think that you can legislate to try to prevent the tyrannical leader from abusing the system. I think you have to permit a system that should function and hopefully, like in the case of Joe Cannon, the members rebelled and kicked the person out when they abused the process.

Q. You anticipated my question.

Are there mechanisms within the party for responding to such an abuse of power by a party leader?

A. Yes. And I would use a current situation to discuss it.

When Newt Gingrich got in trouble and had 11 members go against the leadership, Newt publicly said that he was going to run people against these people in the Republican primary.

Major blunder in my view because back home these individuals became heroes and instead of defeating these individuals, Newt was in effect creating independent power centers, which as a party leader you can't have.

Within two weeks he has withdrawn from that position and has directed the campaign chair to say there will not be a campaign against these individuals and there will not be an attempt to discipline.



We always had that difficulty. I had people in the leadership every time somebody wouldn't vote, quote, "the party position", there were people in our party who wanted to retaliate against them.

I always point out the famous example of what really helped us to punish Phil Graham by kicking him off the Budget Committee so that he quit his district and ran as a Republican and now is the United States Senator in the State of Texas and has made Texas into a competitive political state. If we had been wiser and more patient, Phil may still be a Democrat today.

I think you have to be careful. I think it can boomerang against you very, very easily and I have seen a number of occasions where a leadership has made major blunders and it has turned against them.

MR. KIRBY: Thank you very much.

That is all I have.

MS. SEALANDER: We have nothing further.

Thank you.